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UNITED STATES OF AMERICA

THE "CAR-HOOK" TRAGEDY.

Life, Trial, and Execution
OF




WILLIAM FOSTER

PHILADELPHIA:
BARCLAY & CO., PUBLISHERS.

THE "CAR-HOOK" TRAGEDY.

THE
Life, Trial, Conviction
AND
Execution

of

 **ILLIAM FOSTER**
for the

MURDER OF AVERY D. PUTNAM

GOVERNOR DIX'S LETTERS.

Neither tears, appeals for executive clemency from the wife of the murdered man, opinions on this interesting case from profound judges, learned lawyers, eminent ministers, and the press, nor political influence, backed by a mine of wealth, could save Foster.

THIS WORK IS WRITTEN AND COMPILED

BY

J. EDWARDS REMAULT,

Attorney at Law.

LIKENESSES AND OTHER ENGRAVINGS.

PHILADELPHIA:
BARCLAY & CO., PUBLISHERS,
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LIFE, TRIAL, CONVICTION,

AND

EXECUTION OF WILLIAM FOSTER.

PREFATORY REMARKS.

S we advance in civilization, the heart of mankind becomes softened. Many arguments, pro and con, have been suggested in regard to capital punishment. There are sentimental people, who, upon hearing that a murder has been committed, are profuse in their sympathy, and eager to see the murderer brought to speedy justice. A short time elapses, and then those sympathetic mortals cry out "A commutation of the death sentence," "Poor man," etc. Let us try "imprisonment for life." Well, what do you make of it? A mere judicial farce, with a *pardon* in the prospective, and roughs, the cowardly scum of our crowded cities, laugh at it, and murders are of every day occurrence. Then we turn to *hanging*; does it not strike terror to the hearts of those men who value no lives but their own? "Yes," we hear some one say; but with that speaker we desire a moment's conversation. Do not the trials, following so long after the deed, lose their effect upon the public mind? These *legal technicalities*, are they not rays of hope to the criminal and his friends? How many murders are committed, while the first murderer awaits his trial, or *trials*? Take from the chief executive of the State *his* pardoning power, and when a felon is once sentenced for life, place that sentence beyond the power of any man, or men, to undo, then will these criminals tremble. If this cannot, or rather *will not* be done, then string them up say we, and let us have a *matinée* every Friday, just as long as the murderers are plenty enough to enact the chief characters. Let it be understood, however, that we believe that no man, or men, have any right to take the life of a fellow-creature, and that God cannot sanction such things. When the huge cloud of ignorance, which has long darkened each century, shall have passed over, then do we hope for better things. Judge not others by yourselves, for none of us are alike.

Governor Dix had filled the Executive chair but a little over two months, and for the second time he was called upon to discharge the most painful duty that falls to the lot of any public officer. Twice in that brief period he held the life of a fellow being at his mercy. Twice he has been compelled to listen to the touching cries of heartbroken relatives, of wives and children, fathers and mothers, who have prayed for the lives of those who were dear to them despite their crimes. Twice he has firmly resisted such appeals, in the conviction that justice to the people who have honored him with their confidence demanded that the penalty of the offended laws should be fully paid. The case of Foster was one of peculiar difficulty. Never perhaps in the history of the State have such tremendous efforts been made to secure the Executive clemency as have been exerted in behalf of the murderer of Avery D. Putnam. Ministers of the Gospel, judges, lawyers, politicians, men of large wealth and of high commercial standing have united their voices in favor of a commutation of the sentence passed upon the prisoner. The jurors who tried him, with one exception, have declared their verdict to have been rendered in the belief that it would insure the substitution of life imprisonment for the death penalty, and have expressed their opinion that the lesser punishment was sufficient atonement for the crime. A legal doubt was thus thrown about the case to add to its embarrassments. The wife of the murdered man begged the life of his murderer at the hands of the Governor. The father and mother of the unhappy prisoner, bowed down with shame and grief, supplicated for mercy. A wife, whose devotion to her guilty husband has been almost unparalleled, and children, just old enough to feel the loss of a father, have prayed that he might be spared the gallows, although doomed to perpetual separation from them during the remainder of his days. To all of these Governor Dix listened kindly and patiently; but, while his heart has no doubt yearned to grant their prayers, and while he has, we know, been torn by conflicting emotions and has been seeking strength and light at the throne of Grace to guide him in his painful task; he has never lost sight of the stern demands of justice, and of that broader and deeper mercy which belongs to the people whose lives are endangered by the reckless ruffianism of the city. His sense of duty prevailed. He felt that red-handed murder, which has too long held a reign of terror in the metropolis, must be dethroned and crushed forever; that the gallows must gather in its harvest in order that peaceful citizens may walk the streets in safety, and that happy homes may no longer be rendered desolate in a moment by the cruel hand of the assassin.

The people of New York honor Governor Dix for the Roman firmness he has displayed in this most trying and distressing case, yet they do not withhold their pity from the unhappy man who gave up his life to the inexorable demands of justice. No heart can be so hardened as to be unmoved at the thought of a human being, in the vigor of manhood, in the full

enjoyment of health and strength, going forth to meet his death upon the scaffold; looking out for the last time upon the light of day, upon the glories of sky and earth, upon the living faces of his fellow creatures, in the certainty that in one moment eternal darkness will fall upon his eyes, and his soul will be hurried forward on its awful journey into the presence of its Creator. No one can refuse sympathy with the innocent relatives of the criminal, who were crushed by the weight of their heavy grief; with his loving, faithful wife, who wept alone over her fatherless children; with his parents, who have lived an honored and useful life, and whose virtues entitled them to look for a far different fate for their offspring. Yet very few will believe that Governor Dix committed an error in the course he pursued, or refuse to give him credit for an earnest desire to discharge his duty faithfully, regardless of his personal feelings and despite an unusual and almost resistless pressure. Even those who have been the most untiring in their appeals for mercy were forced to admit that it has been denied them only in the cause of justice. This does not imply that the efforts made by the friends of the unhappy prisoner to secure a commutation of his sentence have been in any degree censurable or improper. It was the privilege of all those to whom the guilty man is dear—of all who honor and respect his parents and who feel compassion for his wife and children—to use every exertion in their power to save him from the scaffold. Nature prompted his relatives to untiring and persistent labor in his behalf, to the exhaustion of every means by which the Executive clemency might be secured. If they had faltered in this work they would have been less than human; they would have been undeserving of that affectionate respect that is now felt for them in every manly heart. The crime for which Foster suffered, and the manner of his death can leave no stain upon them, for careless training and bad example did not lead him into sin. Neither should they affect the good name of his wife, for a devoted, faithful woman, and interesting children should have made his home dear to him, and withheld him from drunkenness and ruffianism. Hence the almost superhuman efforts made by all his family in his behalf were the true and praiseworthy promptings of nature, and no word of censure or of reproach should ever be uttered against them.

Our duty in this distressing case has been no less painful than that imposed upon the Governor. While we have felt as sincere pity for the family of Foster as could be entertained by their nearest friends, we have been constrained to study the public interests and to insist that mercy to the individual should not be yielded at the price of cruel injustice to the people. Ruffianism has been and is still rampant in our large cities, and the palsied arm of Justice has hitherto been powerless to check its infamous career. So lax had become the administration of the law that a short time ago assassins did not dread to perpetrate their crimes in the broad light of day. It was the duty of an independent press and other

publishers, to stand forward as the protectors of peaceful citizens and to demand the stern execution of the law upon all offenders. The newspaper or publisher of pamphlets, that for sordid motives, or through other inducements, can be tempted to palliate the offence of a murderer, or to intervene between the gallows and its lawful prey, becomes the accomplice of ruffians and assassins.

It has been charged that we are bloodthirsty; that we follow the criminals who populate the Tombs as a sleuth-hound follows its victim. We can disregard all such revilings, for in insisting upon the exaction of the full penalty for murder we have been in truth most merciful, for we have helped to check the tide of ruffianism which was fast overflowing the cities of this country. The life of the murderer is not the only stake in this fatal game. The life of the victim and the peace and happiness of the innocent relatives of both are to be taken into consideration, and it is a false humanity which prompts us to ignore all these for the sake of prolonging the days of a convicted assassin. These considerations alone have prompted our course and will induce us to continue our demand for the exaction of the penalty of death in the cases of other murderers yet untried or unhung. These considerations prompt us, while deeply sympathizing with the family and friends of Foster, to applaud the firmness with which Governor Dix resisted the vigorous assault made upon his feelings, and gave forth the word, even at the very moment his own heart was lacerated by the sting of death, "the convicted murderer must surely die on the scaffold."

His task is not yet accomplished. Gaffney has been hung in Buffalo; Foster executed in New York. The crimes of both of these men were committed under the frenzying influence of liquor. Wild with drink and incensed by losses at gambling, Gaffney rushed upon his victim in the street and killed him. Wild with drink and incensed by a quarrel in a street car, Foster rushed upon his victim and took his life. The law is vindicated in these cases. It is shown that the murderer who, under the excitement of furious passion, kills a fellow being must pay the full penalty of his offence. It may be true that he was beyond self-control, that he pulled the trigger or struck the blow unconscious of what he was doing; that he became a murderer without premeditation—almost without thought or knowledge of the act; but he must die upon the scaffold nevertheless. So far so good; the example was needed. But now that the reckless, unreflecting, drunken murderers are properly dealt with, it is time to turn our attention to the sober, calculating assassins, who premeditate their cowardly crimes, who track their victims to a convenient spot and shoot them down like rats in a trap. Gaffney and Foster are gone; how long shall the murderer Stokes be permitted to cheat the gallows? His fate is already sealed, for the Governor, who refused a commutation to Gaffney and Foster, could not even entertain an appeal for mercy for the deliberate and calculating assassin. The singular interposition of a Judge for a time



WILLIAM HENRY HALL, "The Liberator,"
Portrait by John H. Russell.



WILLIAM FOSTER, THE "CAR-HOOK" MURDERER.

William Foster, her Wedder.

averted his fate, but the Court could not and would not make a mockery of justice by granting him a new trial, and the decision of the Governor in his case was recorded in advance. Justice required his life.

THE CAR-HOOK MURDER.

A COMPLETE HISTORY OF

THE CRIME, THE TRIAL, THE VERDICT.

THE JUDGE'S ADDRESS TO THE JURY, AND THE MURDERER AFTER THE VERDICT.

ONE of the most terrible crimes committed in the City of New York, was the murder of Avery D. Putnam, by William Foster.

In the evening of Wednesday, April 26th, 1871, Mr. Putnam, who was a produce commission merchant, doing business at 168 Pearl Street, left his residence in Cottage Place for a walk. Passing the residence of Madame Duval, of 762 Broadway, the hour being early, he dropped in, only intending to stay a few moments. Madame Duval stated to Mr. Putnam that her daughter, Anna Lillie, was at present singing at the Church of the Advent—Forty-sixth Street—and that herself and younger daughter, Virginia, would soon go up to accompany her home. Mr. Putnam graciously tendered his services to escort the ladies, and for that purpose they were soon on the street, and in the fatal car. Nothing worthy of remark occurred until the vehicle reached the Gilsey House, corner of Twenty-ninth Street and Broadway. Madame Duval and Virginia, sat at the right-hand side of the car, and directly opposite Mr. Putnam. All occupied seats close to the front portion of the car. As the car reached the building, Mr. Putnam requested Miss Jennie's attention to the clock on the front of the hotel, and jokingly remarked to the ladies that it would require a pair of spectacles to see it in cloudy weather. On this, Miss Jennie, from her awkward position, strove to see the clock from the window, but failing in this, stooped down and looked through the glass in the door, but did not open it, as stated by some. This motion attracted the driver's attention, who, with an insulting leer, nudged the arm of a man, evidently intoxicated, standing to the right.

The fellow looked around quick, and pressing his face against the glass in proximity to Miss Jennie, who had just sat down, smirked in an insulting manner. This brute, one William Foster, an ex-conductor of the line, seemingly not satisfied, opened the door and peered in, still grinning diabolically toward the ladies. No notice was taken of this until Foster withdrew his head. Madame Duval then closed the door, which Foster, determined to bring on a row, repeatedly opened. Mr. Putnam now, becoming indignant, rose from his seat and passed out to the front platform of the car, closing the door after him. Here Mr. Putnam remonstrated with Foster for his conduct, and begged him, as Madame Duval was suffering from nervous prostration, not to annoy her. This expostulation, instead of quieting the man, made him more insulting, and as Mr. Putnam passed back into the car, Foster followed him.

Only three persons were in the car at the time, but, strange to remark, Foster made a feint to sit close beside Miss Jennie. Seeing this, Madame Duval clasped her daughter and placed her on the left side, away from Foster, whereupon he said:

"What is it your business?"

To this Madame Duval replied: "She is my daughter, sir."

Foster then turned around, sat down by Mr. Putnam, chuckling and jeering to provoke anger. Finding that Mr. Putnam took no notice of this, he then commenced to talk, but without any response from Mr. Putnam. At last, nettled by the silent contempt of his poor victim, he burst forth in saucy tones:

"Say? How far are you going up?"

Repeating this question twice, and receiving no reply, he brutishly said:

"Well, I'm going as far as you, and before you get out I'll give you hell."

With this Foster arose and passed to the front of the car. Nothing further transpired until the car stopped at Forty-sixth Street, upon the request of Madame Duval, and Miss Jennie had already alighted. Mr. Putnam was still standing with his right foot on the platform, and his hand in that of Madame Duval, when the glare of the car-lamp flashed upon a piece of upraised iron, and a moment more a crushing sound was heard. The blow descended on the head of Mr. Putnam, and he tumbled backward on the down track. Madame Duval shrieked for help, and shouted for the conductor to stay the car, but he violently jerked the bell, and the driver whipping up the horses, the car started at a break-neck speed up-town, the assassin the meanwhile throwing the murderous instrument on the front of the car and running away in the darkness. Here the crushed skull of the murdered man lay bleeding, with no assistance near, and no officer in sight. After some time spent in persuasion, Madame Duval finally took the body, and, with the aid of her daughter, dragged it to the sidewalk.

Late in the night the driver, Patrick Cunningham, and the conductor, Frederick Goldthwaite, were secured through the forethought of a passenger who had noted the number of the car.

On being taken to the Forty-seventh Street Station, they at first refused to divulge the name of the assassin, but finally confessed that it was William Foster, and said that he lived in East Twenty-fourth Street. Officer Davis having been sent in search of the culprit, returned at three o'clock in the morning with Foster in custody.

He was taken to the Tombs, where he was confined to await trial.

He was brought into Court on the 22nd of May, and tried on the charge of murder. The jury found him guilty of murder in the first degree, with a recommendation to mercy. The verdict was rendered on the 25th of May. The sentence was passed on the 26th, and the 14th of July was fixed for Foster's execution. Early in July an application was made for a commutation of sentence, and a Writ of Error was granted on the 6th of July. On the 21st of February, 1872, the former judgment was affirmed at the General Term in the City of New York, and the 21st of March, 1872, was again fixed for the execution of the sentence. The application for commutation was renewed, and denied by Governor Hoffman on the 4th of March, 1872. On the 11th of the same month, another Writ of Error to the Court of Appeals, with a Stay of Proceedings, was granted, and on the 21st of January, 1873, the previous judgment was again affirmed at the last-named Tribunal. Foster's account of himself; the case for the prosecution; the summing-up of the Judge; the verdict; Foster's remand to the Tombs; his sojourn there; a description of that prison and its surroundings; Governor Dix's letter to Dr. Tyng; the appeal of the seven jurors; and the latest moments of the condemned, are treated elsewhere in this book.

THE REPRIEVE OF TWO WEEKS.

As soon as the action of Governor Dix—in reprieving the condemned man—became known, the entrance to the Tombs was thronged with representatives of the Press and a curious crowd. For nearly half an hour the messenger bearing the Governor's dispatch addressed to Warden Johnson hammered at the door.

Foster for some days previous had been steadily declining in health, and was unusually subdued and melancholy, scarcely speaking to anyone, and seeming to be resigned to his fate. The night before, feeling cold, he requested permission to leave his cell and warm himself before the great stove. He sat alone before the fire, buried in thought. When he saw the officers approaching, he glanced at them with the stolid indifference which of late has become habitual to him, but suddenly catching sight of the document in the hand of Deputy Sheriff Dumphy, and quickly divining that it contained tidings of vital importance to him, he arose and

advanced to meet the officers, his countenance betraying his terrible anxiety, though he did not speak.

Before the silence was broken on either side, Foster had learned that his case, but a few moments before so desperate, was not altogether hopeless now. Yet when Deputy Sheriff Dumphy seized his hand in a congratulatory grasp, and joyfully told him that a reprieve had been granted, for a moment the fortitude which had upheld the prisoner through the latest and darkest hour of his imprisonment forsook him, and placing his hand upon his heart, he staggered back as though he had received a blow. For some seconds he was unable to reply to the congratulations showered upon him, and stood with his eye fixed upon the Governor's dispatch. His first words, when he had sufficiently recovered himself to speak, were: "Is it possible? You don't say so?"

FOSTER'S STORY, AND A SKETCH OF HIS LIFE AS TOLD BY HIMSELF.

My name is William Foster. I was born on the northeast corner of Eleventh Street and Third Avenue, opposite the office of Charities and Correction, on the 15th of September, 1836. I began to go to school when I was five or six years of age, and continued at study until I was fourteen, attending school in Ninth Street, Twentieth Street, and Twenty-seventh Street. During the Winter Term of 1849, I attended boarding-school in Jonesville, sixteen miles above Troy. In the summer of 1850, I went through the Twentieth Street school a second time, and from thence to the Fergusonville Academy, Delhi, N. Y., where I spent the Winter Term of that year. During the Winter Term of 1851, I returned to Jonesville Academy, and leaving there at the expiration of that term, I came to this city, and was apprenticed to a mason. That was in 1852. I worked at the trade for five years, and on the 17th September, 1857, I was married to Miss Jane Norton, of New York. I remained in this city until December 7th, 1857, when I started for Australia, accompanied by my wife. I remained there three years, and left there in November, 1860, arriving home in March, 1861. I returned home and worked at my trade, as a mason, about a month, when I was appointed Inspector of Sewers by Thomas Stephens, President of the Croton Board.

The sewer was completed in six months, and I was thrown out of employment. Everything was dull here then, so, in October, 1861, I started for California. I only stayed there sixteen months, during which time I was foreman of a sewer in San Francisco, under a Mr. Glynn; when hearing that my wife, whom I had left in New York, was lonely, I took passage for home, arriving here in March, 1863. Again I returned to my trade, pursuing it steadily until 1867, when I was laid up with rheumatism for four months, and what little money I had succeeded in saving up, soon melted away. On my recovery, my father started a livery stable

for me at 355 East Twentieth Street; but in July, 1870, I was compelled to give it up. I was then appointed Inspector of pavements, by William Tweed, and held the office until September, 1870. During October and November of that year I was idle, and in December I went to work as a conductor on the Fourth Avenue horse-car line. I remained there ten weeks, and left for the same position on the Broadway and Seventh Avenue road. I had been there five weeks lacking two days, and that brings me up to the date of this occurrence (meaning the death of Mr Putnam). I had been excused from duty the day before, and on Wednesday, April 26th, I had run one trip on car No. 73, when I went to the starter and asked to be excused, because I was unfit for duty; I was drunk. The public may draw their own conclusions from what followed, but this I must and *will* say, I had no thought of killing Mr. Putnam, at the time or previous. Drink had crazed my brain, and to that cursed demon, which steals into society of all kinds, and works its damning deeds, may I render thanks for the *position I now occupy*.

THE CASE FOR THE PROSECUTION.

On Wednesday, the 24th of May, the testimony for and against the prisoner was all in, and counsel for the defence having closed on behalf of accused, Judge Garvin proceeded to address the jury, for the prosecution. After a lengthy exordium replying to certain strictures made by Mr. Bartlett (Foster's counsel) upon the conduct of the case for the people, Mr. Garvin said: No capital case on the records of this court has been presented with equal promptitude. The prisoner's counsel admits that a great crime has been committed—a view in which the whole community concurs. It is therefore the court's duty to afford protection to the people of this vast metropolis, over which crime is now riding almost unchecked.

It is true that the prisoner has a wife and children. So had Mr. Putnam, who has been slain by the accused. What is law? What is it worth if it does not furnish a security for life, and a condign punishment for criminals? Order, and the best interests of society, are in peril if such an act as Avery Putnam's murder is allowed to go unrequited.

The defence has said that murder was taking the life of a fellow-creature with a premeditated design to kill. Such an intent was plainly present in this case. Mr. Putnam was in the car in the peace of God, and was entitled to, and was under, the protection of the law.

The prisoner, who was a man in years and discretion, having a family of his own, sat beside deceased, and tried to get answer from him as to how far he was going. Finding that he could not get one, he got up and vengefully said: "I will go as far as you go, and before you leave the car I'll give you hell."

Foster had got on board the car at Sixteenth Street. He lived in Twenty-second Street. Now, why did he not alight when he reached the latter? Why did he ride on still further? More than that, why did he

ask the driver, "Have you got the car hook?" Again, when he reached the corner of Forty-sixth Street he waited for the bell, and when the vehicle stopped, he seized the car hook, alighted, and running along the west side of the car, he struck Mr. Putnam on the head, and slew him. Now, that was exactly what he meant to do.

His intent was evident, inasmuch as his query about the car hook was put to the driver four blocks below the scene of the murder. That was sufficient to show premeditation—nay, it can be proven still further. Foster had been given one moment's chance when the driver caught his arm and said, "Don't." But Foster turned upon the driver and menaced him with the weapon. Was not *purpose* evident in that act? He then went to deceased, and struck him a tremendous blow, which must have been brought down with both hands.

Now, all this showed threats, plans, purpose, premeditation, and determination.

Counsel then referred to the case of Rogers who took Swanson's life with a knife, and to the Larkin case, as proving that intoxication was no extenuation of the offence. He also referred to the Nathan murder, saying that he supposed the defence would say that he who murdered that defenceless old gentleman, when there was none but God to see the terrible deed, that the murderer had no intent to *kill*, that his only purpose was *robbery*.

If a man kill another without any provocation the law implies malice. It is the premeditation, the design that is necessary to constitute the offence of murder. Now, gentlemen! was there any provocation in this case. Neither Foster nor Putnam ever saw the other before. The victim had used no insulting words. Nevertheless the prisoner cannot explain the act. There are none but the living witnesses who do explain it.

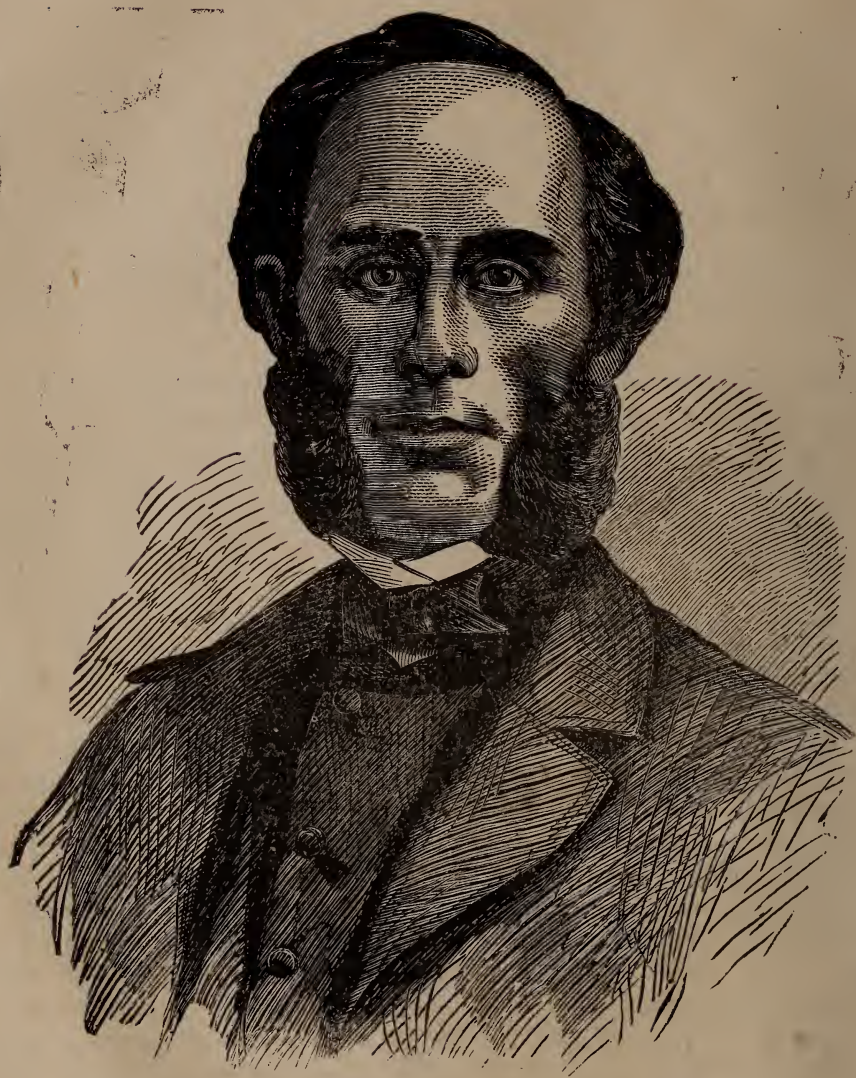
With regard to the condition of the mind of Foster, it is right that the jury should know that two hours after the fatal occurrence, Foster had sufficient memory to remember his act, and its attendant circumstances. At the depot, when the two car conductors were writing the report of the assault, Foster started up, and said: "I am the man who did it."

As to the consideration of the suspension or the annihilation of the faculties, Foster knew that he had taken the driver's hook, and he said to the driver, when he got to the depot, "Let's take a drink," and they took drinks together.

The deed was without provocation; it was done with full intent, premeditation, and malice. The evidence of all is, that he resolved it in his mind; looked for an instrument; went around the west side of the car, and stole on his unsuspecting victim. He is, therefore, fairly responsible for his conduct. Finally, the counsel for the prisoner admit that the great mass of the evidence is true.



ALFRED J. BROWN



AVERY D. PUTNAM, THE MURDERED MAN.

Avery D. Putnam, der Ermordete.

JUDGE CARDOZO'S CHARGE.

At the conclusion of District Attorney Garvin's remarks, Judge Cardozo charged the jury as follows:—

Each of the counsel of the prisoner has submitted to me certain requests to charge, and I shall take them up in their order. First, as to the requests submitted by Mr. Bartlett—I charge the first: That the law of murder, as it formerly existed in this State, so far as it adjudged from the mere act of killing, although it could not be proved that the same was done of malice aforethought, has been repealed. I charge the second, as the law stands now: The killing of a human being without authority of law, is murder in the first degree, murder in the second degree, manslaughter, or excusable or justifiable homicide, according to the facts and circumstances of each case. I charge the third: It is exclusively within the province of the jury to pass upon the facts and circumstances, and to determine the degree of offence, and under an indictment for murder in the first degree, the jury may find a verdict of murder in the second degree, or of any degree of manslaughter. I charge the fourth: If the jury have a reasonable doubt from the evidence as to what degree of guilt to convict of, it is their duty to convict of the lesser degree. I charge the fifth: More is necessary than a blow with an instrument likely to kill, to constitute murder in the first degree. There must be intention, deliberation, premeditation. I charge a portion of the sixth: To constitute murder in the first degree, the jury must find not only that the prisoner designed to kill his victim, but that it was a premeditated design. I decline to charge the rest of it. I charge the seventh: In determining the intent, as in determining any other question, the jury are to take into consideration all the facts and circumstances of the case; and to justify them in finding a verdict of murder in the first degree, the evidence not only of an intent to take life, but of premeditation, must be such as to exclude from their minds, to a moral certainty, every hypothesis but that of this highest degree of crime. I decline to charge the eighth. I decline to charge the ninth. I charge the tenth: Although a deadly weapon was used, it is a question of fact for the jury to determine with what intent it was used. I decline to charge the eleventh, except so far as is embraced in my general charge. I decline to charge the twelfth. I charge the thirteenth: The killing of a human being without a design to effect death, in the heat of passion, but in a cruel and unusual manner, is in no case murder, or any crime greater than manslaughter in the second degree. I charge the fourteenth: Whatever the intention of Foster in assaulting Mr. Putnam may have been, if it was not a premeditated design to take his life, it matters not how long the intention had been entertained: It does not constitute murder in the first degree.

In respect to the requests presented by Judge Stuart on behalf of the prisoner, I decline to charge the first. I charge the second. *On this in-*

dictment the jury can convict of murder in the second degree, or of some one of the degrees of manslaughter. I decline to charge the third. I charge the fourth: Before the jury can convict the prisoner of murder in the first degree, they must find, from the evidence, that the prisoner had a specific, pre-meditated design to effect the death of the deceased, or of some human being: that they must be able to say, beyond doubt, that such was his specific design.

There were several other minor points offered by the defence on which Judge Cardozo charged the jury; but the foregoing were the most important. Having, then, carefully reviewed the law and statutes applicable to this case, his Honor closed thus: "Deal justly with the prisoner. It is important to the people, who need protection from murderers; for, if lawlessness be not restrained by the firm discharge of their duty as jurors, in a proper case, the hand of the assassin which destroys a citizen to-day, may attack another to-morrow."

VERDICT OF THE JURY.

The jury retired, and after having the statute on murder in the first degree fully explained to them, were locked up for the night. When the Court reassembled in the morning, after answering their names, the jury were addressed by the Clerk, in this way:

"Gentlemen of the jury, have you agreed upon your verdict?"

Mr. Hendrickson, the foreman, said—"We have."

The Clerk—"How say you, gentlemen?"

Mr. Hendrickson—"We find the prisoner guilty of murder in the first degree, but we recommend him to mercy."

On Friday, May 26th, Foster was sentenced to death. Then there came the stay of proceedings, followed by the review of the Court record, and the decision of the Court of Appeals thereon. We have already given the summary of the subsequent events in this *cause celebre*

THE TOMBS.

Among all New York City Prisons, there is none which has a more unenviable notoriety than the Tombs. Not that it is essentially worse than others (and all are bad enough), but it is most prominently brought before the public, from its connection with the Foster case, and also from the fact that it is situated near the City Hall, easy of access, and is, besides, a sort of *omnium gatherum* into which every rascal and unfortunate honest man is introduced on his way to liberty with a blasted character, or on his way to the Penitentiary, with no character at all.

We know of no place within the precincts of the vast city in which one may spend an hour with more profit, if he is morally disposed, than the Tombs—we do not mean under arrest, but simply as a visitor, intent upon viewing a melancholy phase of metropolitan life. Every form of vice is before the eye, as exhibited by the shrinking youth, just incarcerated for

his first crime, up to the notorious villain who finds his only comfortable home within the dreary walls of his familiar cell. Too many, unfortunately, know the process of an introduction to this "den of thieves," this home of misery. But for the benefit of the happily ignorant, we will take our readers on a visit, and note the most remarkable things inside and out.

The Tombs, as it was properly christened by public consent, was built some forty years ago, nearly in the centre of what was known to the older inhabitants as the Collect Pond. At the time of its erection there were few buildings in the vicinity, and those of the most wretched character, and the whole place wore a sad, dilapidated look, and yet this locality is within three or four blocks of the City Hall. To get a foundation for the prison, huge piles or timbers were driven into the swampy ground, and so soft and miry were the depths below, that many huge trunks of trees perpendicularly, by their own weight, sunk out of sight. Labor finally triumphed, and a resting-place was created for the foundations, and they were duly commenced.

We have not been able to learn the name of the architect of this "Egyptian pile," but we can say of him—as we think of the builder of the Merchants' Exchange in Wall Street—that the highest order of genius has been displayed to defeat the objects for which the edifice was created, and that heavy marble walls and unnecessary columns usurp all the choice localities which should have been dedicated to the use of living, breathing men. The style is of the Egyptian order run mad, all the available space on the streets being taken up by shapeless shafts of huge rocks, very well when on the side of the granite hills of the Nile, but very much in the way in the crowded precincts of New York City. The locality is bounded by Centre, Franklin, Elm and Leonard Streets, the main entrance being on Centre Street, leading to the Court of Sessions. The entrance for the prisoners to be confined is on Franklin Street, as is also the gate through which passes the "Black Maria," loaded with male and female convicts on their way to Blackwell's Island.

Upon the arrest of an individual for rowdying or thieving, or otherwise, he is first taken to a "Station House," where he is searched, and placed in a cell over night; in the morning he is brought before the presiding magistrate at the Court of Sessions, where the charge is made, and if no bail is given, the prisoner is taken around on Franklin Street, at the entrance proper of the prison. Here you come to a large hall, divided up by railings, the object of which seems to be to make comfortable places for idlers to lounge behind. Near the entrance door, however, is a railing, behind which is a desk. Here the prisoner has his name and crime entered upon the register. His personal description is taken; the number of the cell to which he is consigned is noted down, and he passes on to the "Interior of the Prison Yard."

Here all is repulsive enough; the rough, heavy walls, pierced with

loopholes and frowning with grated doors, seem to afford little chance for escape; but entering the door which is seen in the centre, and under the bridge which connects the upper stories of the adjacent buildings, you come at once to long rows of small cells, each numbered and each provided with two doors, the outward one of solid iron, the interior one grated so as to expose the prisoner, and show to the spectator an imperfect view of the furniture, which consists simply of a rough bunk or cot, rarely any other article of comfort. Throughout the day the outside doors are open, at nightfall they are closed. The interior presents three stories of corridors, which are reached by light iron steps, and are entered by arrow galleries.

If you desire to see a prisoner, having procured a pass from the Commissioners of "Charities and Correction," by entering the prison on Franklin Street you meet a keeper holding slips of paper in one hand, and a pencil in the other. By asking to see a prisoner, you have no difficulty if you know the number of the cell, as all personality is lost in numerals. You get a slip of official paper on which is written the number of the cell containing your friend, and keepers stationed about in different places show you the designated point. Having reached it, you have the satisfaction of talking through the grates and conversing with a human being, as you would with a tiger or any wild beast—a man in civilized society being shut up from society for having moral fangs and teeth, just as lions are for possessing the physical representatives of these destructive accessories.

The cells where the convicted murderers are confined consist of four floors. The cells of the first floor are ten feet six inches in height and eleven by five feet seven inches in ground measurement; the second, third, and fourth floors successively contract in area, the cells on the fourth being ten feet high and seven by five feet five inches on the floor. Light is admitted through a window about two feet long by five inches wide, located near the ceiling. Above each door is a little slate bearing the name of the occupant. No more discriminating appellation could be given this portion of the prison than the one it has held for many years, "Murderers' Row."

Near the entrance, and immediately back of the stove, is cell No. 4. A middle-aged lady in deep mourning and two gentlemen are conversing with the inmate, Edward S. Stokes, convicted of the murder of Colonel James Fisk, Jr. Through the upper corner of the wire door, the thin figure is seen, with head slightly inclined. He is smoking a cigar, and we hear the admonition: "Keep cool, Ed.; don't get discouraged; your counsel are working like beavers."

Further along the corridor, we come to cell No. 15, in which Patrick Leavy has been confined since the 12th of October last, on the charge of having killed his wife.

Completing the tour of this corridor, we pass up-stairs and along the

balcony. In No. 33 we find Robert Bleakley, and in the adjoining one John Scannell, committed November 8th, for the shooting of Thomas Donahue, in a pool-room. William J. Sharkey has occupied cell No. 41 since the 4th of September, having shot "Bob Isaacs" during a quarrel. In 42 is James C. King, who shot Anthony O'Neil, on the 18th of November, after a hearing on a divorce suit before Judge Sutherland. In the next, with his head bent to catch every word of a friend, is William Foster, who killed Avery D. Putnam with a car-hook, in April, 1871. David Murphy shot David Barry in a drinking-saloon, in April last, and has occupied No. 44 since the 22d of that month. Cell No. 45 has held three murderers during the past year. On the 8th of April Frederick Heggi was committed, charged with poisoning Frederick J. Siegfried, in 1869. On the 3d of December James Fitzpatrick, and on the 6th, John Lynn, were committed to this cell to await trial.

Passing still further, we come to No. 70, where we read the name of Charles Cardes, committed December 30; and No. 71, to which John Fitzgibbons was ordered on the same day.

There are fourteen persons altogether confined on charges of murder.

The gallows on which Foster was hanged, has thus far launched into eternity thirteen human beings. The following are their names: Nathan Gordon, February 21st, 1862; Wm. Henry Hawkins, June 27th, 1862; Bernard Fruery, August 17th, 1866; Frank Ferris, October 19th, 1866; Geo. Wagner, March 1st, 1867; Jerry O'Brien, August 2d, 1867; John Reynolds, April 8th, 1870; John Real, August 5th, 1870; and John Thomas, March 10th, 1871. Besides these there were Gonzales, Pellisier and Rodgers, who were hanged in Brooklyn, and lastly William Foster, March 21st, 1873.

AN OPINION FROM THE RELIGIOUS PRESS.

[From the *Church and State* (Episcopalian), March 12.]

As the result of the whole discussion we cannot resist the conclusion that Foster was not legally convicted and cannot be legally hung. If we are pointed to the decision of the Court of Appeals, we have only to say that it does not appear that this Court has ever passed upon the propriety of the verdict of the lower Court, but that it simply passed upon exceptions taken by the counsel for the prisoner.

In what we have said, we are moved by no pity for the condemned, other than that which every Christian man should feel for one who has so grievously sinned and is meeting so terrible a punishment. If we believed he could be legally executed, no word of ours should be uttered to avert his doom. We urge no facts in his behalf except those which bear directly upon the character of the act which he committed. We have no scruples about capital punishment and no sentimental philanthropy in regard to criminals. But we hold it to be of the utmost im-

portance that the death penalty should never be inflicted except in the strictest accordance with law, and where the infliction carries with it the best moral sense of the community.

Some of the papers have taken great umbrage at the fact that certain clergymen have expressed their views in favor of the commutation of this sentence. We trust that clergymen will be little troubled by this, but will have the manliness to hold and utter their convictions on all subjects which so vitally affect the moral welfare of the community. They will cease to be needed in the world when they do not dare to set public sentiment at defiance, if necessary, in the maintenance of what they believe to be true and right.

We take no exception to anything in the form of argument or earnest appeal on the part of those who believe that the penalty of death should be inflicted in this particular case. They have a perfect right to the expression of their opinions, and their arguments and appeals should receive all the consideration to which they are entitled. But when they affirm that a great pressure has been brought to bear upon the clergy and the press, and that thousands and thousands of dollars have been expended, if they mean to intimate that the clergymen who have exercised in this respect the right of every citizen have been influenced by any corrupt motive, we pronounce it to be false. As for the press we can speak only for ourselves, and we do so only lest our silence in this respect should rob what we have said of any influence it might otherwise possess. We wish, then, to declare, in the most solemn manner, that we have never been subjected to the slightest pressure to express our views on this subject, that we have received nothing but the thanks of those interested, but that we have been the constant recipients of abusive anonymous letters and attempted intimidations from those who are opposed to the position we have taken.

The discussion of this subject cannot fail to do good after the excitement by which it has been attended has subsided. It has been an education of the community in the great principles which apply to the administration of justice—an education apparently much needed. The Governor, who has a responsibility in this respect from which any one might shrink, will discharge his duty after the most thorough and conscientious investigation. Our purpose is accomplished by the vindication of the right and propriety of a review of the whole proceeding with reference to the exercise of Executive clemency, and of the privilege which every citizen enjoys of expressing his opinion in matters of public interest and petitioning the constituted authorities in regard to them, should he see fit to do so.

MRS. DUVAL INTERVIEWED.

We now lay before our readers the following brief account of an interview had by a reporter with the Duval family, the ladies of which, it will



THE TEMPLE OF THE
MUSES



MAIN YARD OF THE TOMBS.

Haupthof der Tombs.

be remembered, were in company with Mr. Putnam when Foster assassinated him:—

In the vestibule of an elegant mansion on East Twentieth Street, the writer one morning met Miss Jennie Duval, the young lady in defence of whom Avery D. Putnam was killed, by William Foster, two years ago.

"Mamma is very sick," she said; "perhaps I will do as well?"

"I wished to know if any persons have asked your mother to sign the petition for commuting the sentence of William Foster?"

"I will speak to mamma;" and, having ushered her visitor into the parlor, she whisked away.

Presently a pleasant-faced man entered the room, and said:—

"Mrs. Duval will be down as soon as she can dress. Can I do anything for you?"

In answer to an inquiry, he said:—

"Before I came to this country, I studied law for seven years in France. In that country they are very severe on criminals, and, of course, I look on this case of Foster through the eyes of my countrymen. I think if Governor Dix knew the circumstances as I and my family know them, he would not hesitate a moment as to his duty. Since Foster's conviction, his friends have done all in their power to injure us. There has been a detective watching the family for the last eighteen months, trying to find something against us. We have given

NO RECEPTIONS SINCE MR. PUTNAM'S DEATH,

and our visitors have been only intimate friends. They have failed to intimidate us, and I believe they have sounded Mrs. Duval on the subject of money. Here she is; she can tell you about it better than I."

Mrs. Duval described, in feeling language, the scene of the assault on Mr. Putnam. She said:—

"I have not known a well day since that awful night. That horrible picture is ever before me. The surgeons may say what they please, but Mr. Putnam was as much a dead man at half-past nine that night, as he was the next day. 'Saint Foster'—I call him 'Saint,' now that so many men have testified to his religious sentiments—struck him twice—not once, as his friends assert—with a 'wire' large enough to kill any man."

Here the lady's eyes filled with tears.

"Has any one approached you on the subject of commuting Foster's sentence, Mrs. Duval?"

"Indirectly, they have, on three occasions. About eighteen months ago a man called here to talk with me about Foster. He said to me: 'You are not desirous to see Mr. Foster hanged, are you?' I told him my desire was to see justice done. I thought if there was any punishment worse than hanging, it should be meted out to him. He then said to me: 'It would be for your advantage to have him saved!' I rose and closed the interview at once. I told the man that the advantage of society de-

manded that Foster should be put out of the way. I was a poor woman, but I could neither be intimidated nor bought over to perpetrate an outrage on justice. He went away. Some time after that I met this man again. It was just at the time when Mrs. Putnam had recovered damages from the railroad company. He said again, 'It will be for your advantage to have this man saved from hanging. There is a great deal of money in it, as you can see.' I repeated to him my former words, and have never seen him since. I think it was the same man who is now accused of bribing Mrs. Putnam. Last week another attempt to sound my feelings on the subject was made. A lady called on me and began talking about Saint Foster. At last she said: 'You are not willing to see him hanged, are you? It is in your power to save this man's life.' I told her Mr. Putnam's life had been sacrificed in the cause of society; I considered both him and myself as martyrs to that cause. If society was now willing to sacrifice both him and me by allowing the murderer to escape, I would have no hand in it. She then said: 'But, supposing there was money for you in this thing; or, putting it in another form, supposing this man is hanged: he has friends large in political and money influence. The well-being of yourself and your daughters might be endangered for the next twenty years. You do not know the power of his friends as I do. Your very life may be in danger.' I started from my seat and faced her. My indignation was thoroughly aroused now. I said:

Madam, it is no new thing for me to have my life threatened. I heard one of Foster's counsel say, during the first trial, that the main thing they wanted was to get rid of the principal witness. I was then very sick, and they postponed and postponed, hoping that I would die. I am living yet to remain true to the best friend myself and my husband ever had.' She left me, then, and I have not been approached on the subject yet."

"Mrs. Duval, did your impressions of Foster on that night lead you to believe that he was an exemplary Sabbath-school pupil?"

"They led me to believe the truth—that he was a drunken loafer, his face was bleared with the habitual use of rum. I am surprised that Dr. Tyng should say that he was a scholar of his. He may have been a scholar in the church over which Dr. Tyng now presides. I was a member of his church—the Epiphany, in Philadelphia—and the Doctor came to New York at the same time, I was about to say in the same car, that I did. That was thirteen years ago. Foster is now about thirty-six years old. He was a pretty large Sunday-school scholar if he studied under Dr. Tyng."

When the conversation ended Mrs. Duval sent for her two daughters, Jennie and Annie, and introduced them.

"This," she said, pointing to Jennie, "is the little girl, a mere child then, as you can see, whom that ruffian insulted; and this," introducing Annie, "is the young lady whom we were going to accompany home from church. I am afraid Foster's sentence will be commuted. If it is,

Governor Dix will have betrayed the trust reposed in him by the people, whose interests he has sworn to protect."

THE ALLEGED BRIBERY OF MRS. PUTNAM.

WAS SHE PAID A LARGE SUM OF MONEY TO WRITE A LETTER TO GOV. DIX, ASKING A COMMUTATION OF FOSTER'S SENTENCE?

The merchants of Broad, Beaver, South William and Pearl Streets were greatly excited over statements made by William L. Allen, butter merchant, 67 Pearl Street, that money had been paid to Mrs. Avery D. Putnam for signing the letter to Governor Dix. The report circulated rapidly and was the sole theme of conversation in the Produce Exchange. A reporter called upon William L. Allen to get his statement of the alleged bribery.

Reporter—Mr. Allen, it is asserted that you are cognizant of the fact that Mrs. Avery D. Putnam has been paid \$15,000 by friends of Foster to sign the letter which has been published.

Mr. Allen—There is no doubt but that money has been used, but as Mrs. Putnam is a full cousin of my wife I must decline to give you any statement for publication.

Reporter—If money was used, by whom was it furnished?

Mr. Allen—The money came from a rich relative of Foster.

Reporter—Was not \$15,000 a good deal of money to pay for such a letter?

Mr. Allen—I acted as adviser for Mrs. Putnam, and must decline to say anything further.

Reporter—Do you think, then, that the letter had any effect with the Governor?

Mr. Allen—It certainly should not have any more weight than from any one else. Personally I am in favor of hanging Foster; but my family relations are such that I must decline to talk further.

William A. Covert, of the firm of W. A. Covert & Co., No. 68 Pearl Street, was next called upon and stated: The statements of Mr. Allen in regard to the payment of money to Mrs. Putnam have been made directly by him to myself, as well as to a number of other men here in the neighborhood, each and every one of whom are willing and ready to make affidavits to the facts. Mr. Allen stated to me that negotiations with Mrs. Putnam had been begun by the friends of Foster more than one year ago. As a relative I was called in as adviser. Mr. Willecox, of the Willecox & Gibbs Sewing Machine Company, went on to Providence to negotiate with Mrs. Putnam; he acted as the go-between through which the compromise was consummated; the first proposition presented to Mrs. Putnam was an agreement to educate her son. Mr. Allen declared that he advised her not to accept any terms unless money was offered. He advised her to ask \$25,000, and not to take less than \$15,000. He also advised her not to sign any letter until the money was put into her hands. He stated also

that he had been absent for some time and did not know exactly what sum was paid, but was certain that it was not less than \$15,000. In fact, he went so far as to say that he might have made \$5000 out of the business himself if he had promised to use his influence with Mrs. Putnam. Mr. Allen concluded by saying that "now that Mrs. Putnam had received the money, he did not care who knew the story." Therefore I do not have any hesitation in making this statement.

Mr. Austin G. Putnam, brother to the murdered man, here entered the office of Covert & Co., and affirmed that he had been told the same story by William L. Allen. All were astonished at Allen's reticence after the manner in which he had previously spoken of it.

Mr. George Hollister, of Hollister & Chamberlain's, No. 90 Broad Street, was next called on. He confirmed in every particular the statements made by Mr. Covert and Mr. Putnam, and said that Mr. Allen had repeated the story to him.

Mr. Hurlburt, of Hurlburt & Sons, No. 65 Pearl Street, made the same statement to the reporter, with the additional item that Mr. Allen had told him privately of the negotiation more than one month ago.

H. Henneberger, former partner of Avery D. Putnam, also stated that Mr. Allen had told him the same story in general. All of these will stand ready to make affidavits to their statements.

A PETITION FROM THE MERCHANTS.

The following petition was drawn up and circulated for signatures:

To His Excellency, JOHN A. DIX, Governor of the State of New York:

We, the undersigned, in consideration of the unholy means employed to defeat the ends of justice in the case of William Foster, condemned for the murder of Mr. Putnam, do earnestly pray you to wholly ignore all signatures, petitions and letters to your Excellency, and decide only on points of law and evidence, such as the corrupting influence of money has not touched.

H. Henneberger, 68 Pearl Street; William Hurlburt & Son, 65 Pearl Street; N. Stetson, Jr., 73 Pearl Street; Benjamin Ford, 69 Pearl Street; E. S. Robinson, 73 Pearl Street; A. A. Platt, 73 Pearl Street; Benjamin F. Dominick, 69 Pearl Street; Benjamin F. Tuthill, 191 Duane Street; William L. Allen, 67 Pearl Street; George B. Darley, 10 Pine Street; Edward A. Sewer, 49 Pearl Street; B. F. Card, 37 Pearl Street; J. M. Atwater & Brother, 61 Pearl Street; A. W. & F. W. Leggett, 36 Pearl Street; William P. Robbins, 33 Pearl Street; W. R. Preston & Co., 66 Pearl Street.

INTERVIEWS WITH THE PETITIONERS.

The gentlemen who signed the above petition knew Mr. Putnam personally in his life time, and were cognizant of his many good qualities and of his failings. The petition was therefore made with full cognizance

of all the circumstances of the case, and was got up by the friends of Putnam to counteract the great influence which had been brought to bear upon the Governor that he might accord the condemned man grace of his life. It will be noticed in the interviews given below that the general opinion prevails that all the statements made came in reality from one source, and that the gentlemen interviewed pretend to know absolutely nothing of their own knowledge, but to have taken for granted the statements which were made to them by their friends. On the other hand, it is said that the most important point has been a matter of conversation around the Produce Exchange, where all state that no secret whatever was made of the matter, but that on the contrary it was given all the publicity possible among those who took a peculiar interest from the fact that they had known the dead man, Putnam, and it seems singular that the story which has been so well known among them for some time should not have become publicly known before. But here again it appears that Mr. Allen, who first gave the report currency, according to the statements of all, only did so after Mrs. Putnam received the money, saying that then he had no further interest in keeping it quiet.

Among those who signed the petition, Mr. Henneberger lives in Melrose, Mr. Tuthill in New Jersey. The others, with the exception of the three who have been seen, and from whom it was fair to infer that all which would be of any interest or importance has been obtained, are not mentioned in the directory. The reporter was therefore obliged to confine himself in his researches to these three—Mr. Stetson, Mr. W. R. Preston and Mr. F. W. Leggett, who live in the city.

The reporter first proceeded to the house of Mr. W. Stetson, Jr., at 232 West Fifty-fourth Street, and acquainted that gentleman with the object of his mission. Mr. Stetson said he was quite willing to say all he knew about the matter, which, however, he added, was little.

"You signed the petition?" said the reporter.

"Yes."

"You notice the words 'in consideration of the unholy means employed. To whom or to what does that refer, as also the phrase 'such as the corrupting influences of money have not touched?'"

Mr. Stetson—"To the best of my belief these phrases refer to the money which has been paid to Mrs. Putnam to give her name to the letter asking for a commutation of sentence for Foster."

"Do you know that money has been paid to Mrs. Putnam for the use of her name?"

"I have no doubt that it has. And yet it has simply come by hearsay to me, though it is a matter of notoriety to many of us."

"And what is the source of this information?"

"It comes from Mr. Allen, whose name is signed to the petition. Mr. Covert, who occupies the store at No. 68 Pearl Street, formerly used by the murdered Putnam has been circulating this petition around and

has been very active in getting names. He drew it up, and has shown great interest in the matter. He told me that Mr. Allen had dis-
 missed him that Mrs. Putnam had had overtures made to her some
 time ago to put her name to a petition, and at that time the offer made to
 her was to take her child and educate it. This she refused to do, and
 then the proposition of giving her \$15,000 was made. At this time she,
 it appears, consulted with Mr. Allen, who is some relative of hers. I
 understand that even the \$15,000 was refused, but at all events the bar-
 gain was finally consummated at something between \$15,000 and
 \$25,000."

"Is Mrs. Putnam so poor that it was necessary for her to take this
 money?"

"There is no doubt that she is in very needy circumstances, and that
 she has no small difficulty in supporting herself. Putnam was a man
 who did a small business, and just did about enough to support himself
 and his family; nothing more. He was not able to put anything by, and
 when he died, his widow, I believe, had all she could do to support her-
 self."

"You have then no positive knowledge that money has been used to
 buy Mrs. Putnam to petition for her husband's murderer's reprieve?"

"I have enough knowledge to be thoroughly convinced and to have
 signed the petition in consequence. Mr. Covert is a thoroughly respecta-
 ble and reliable gentleman, and so is Mr. Allen."

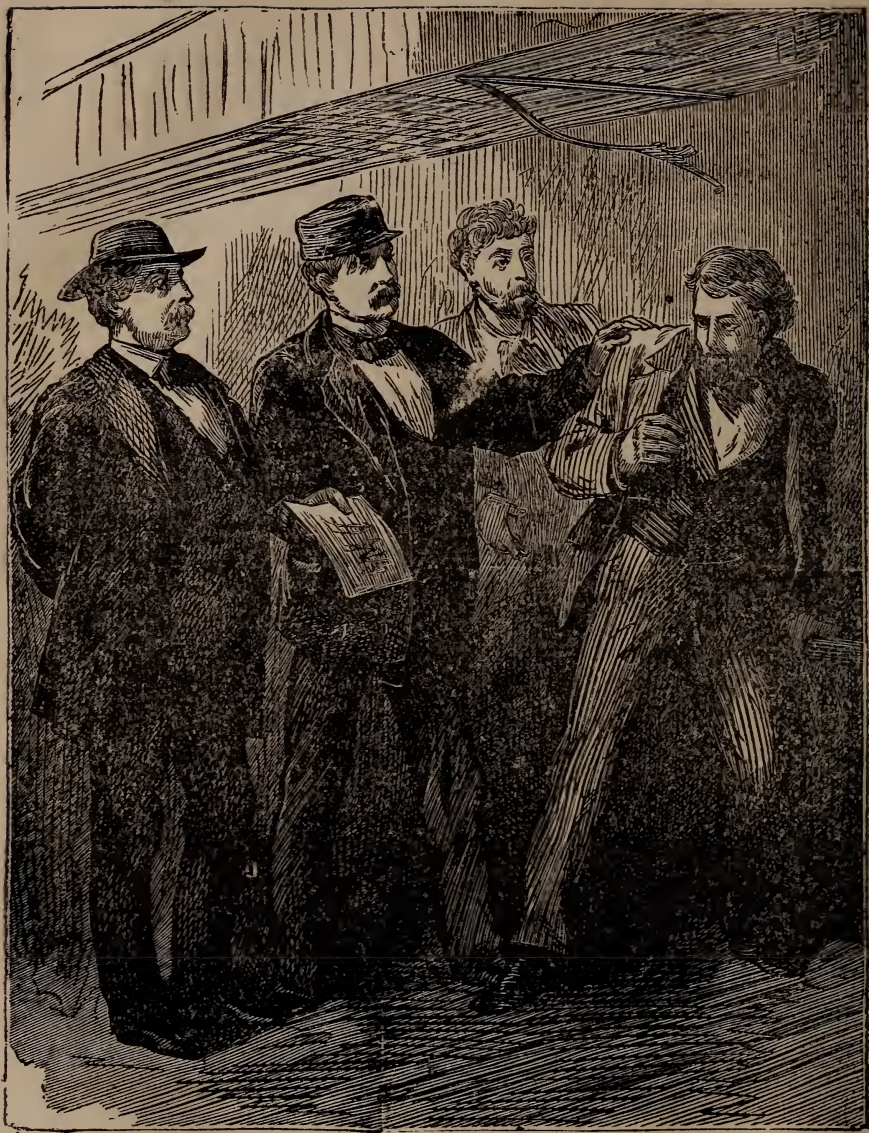
"But," broke in the reporter, "Mr. Allen, when questioned about the
 matter by a reporter, seemed to be very unwilling to substantiate the
 statements he so freely made before."

"That seems to me very surprising, as it is notorious that Mr. Allen
 has courted publicity to his statements, and has made them very freely.
 The matter is no secret among us on the street, and it was on the assur-
 ance that it was true that we signed the petition. I myself would like
 the Governor to know that the influences that were brought upon the
 widow of the murdered man have been something more potent than mere
 sentimental ones. The idea of the petition originated from the articles
 in the papers a few days since, which, after urging the Governor not to
 reprieve Foster, ended by saying that of all the documents presented to
 him the only one of any force or bearing was that in which the widow
 of the murdered man sued for the life of the murderer. We wished then
 to show that this document was not so strong and so disinterested as it
 appeared upon the surface, and that, seeing it was so paid for, no great
 amount of importance could be attached to it, as its only strength lay in
 its apparently pure-minded disinterestedness. It now lies with the Gov-
 ernor, after we present the petition, to say how much weight her letter
 must bring. All we wanted to do was to show the facts as they were."

The reporter here left Mr. Stetson and called upon Mr. W. R. Preston,
 at No. 27 West Forty-eighth Street. Mr. Preston was in bed, and the
 reporter was shown up into his room.



THE BRIDGE OF THE GREAT RIVER, AS SEEN FROM THE EAST, IN THE YEAR 1850.



GOOD NEWS FOR THE PRISONER—GOV. DIX GRANTS A REPRIEVE.
Gute Nachricht für den Gefangenen—Gov. Dix bewilligte einen Aufschub.

When told about the petition Mr. Preston expressed the greatest reluctance to have his name identified with it. He said it was simply a petition to the Governor and that it would not be published.

"On what grounds did you sign the petition?" asked the reporter.

"Simply because I believed that the Governor had been unduly influenced by petitions and letters in favor of the prisoner. I thought that it was very well for him to consider the questions of law in the matter, but not to go outside of these. If after Governor Dix looks over the case on these questions of law, he comes to the conclusion that Foster had better be reprieved, I shall have nothing to say, but it was simply on these grounds that I signed the petition, and without any idea that it was to be made public."

"You have, no doubt, observed the strong language of the petition you signed?" said the reporter. "Thus, 'In consideration of the unholy means employed to defeat the ends of justice;' and again, 'such as the corrupting influences of money have not touched.'"

"This is very strong language," rejoined Mr. Preston, "very strong, and if I had noticed it when the petition was put before me I would not have signed."

"Do you mean to say you signed them without looking over it?"

"I just cursorily glanced over it, you know, but did not take in its spirit."

"You have heard of the charges which have been made about Mrs. Putnam's name being paid for?"

"Yes, I have heard remarks of something of the kind, but I don't know anything about them."

"And yet it is acknowledged that this is what the petition aimed at by using the language it does. Did you know that?"

"Well, as I tell you, I did not know or understand what the object of the petition was, and signed it on being asked to do so."

"From whom did you hear that Mrs. Putnam had received money to sign her name to the letter to General Dix?"

"Oh! I heard it from several parties, and I believe from Mr. Allen, who is a relation of Mrs. Putnam."

"And from no one else?"

"I am not sure from whom, but I heard it from several. But I did not know the petition meant all this."

Mr. Preston said again he hoped his name would not appear to the petition, and the reporter left.

He then called upon Mr. F. W. Leggett, of the firm of A. W. & F. W. Leggett, produce dealers, whose names as a firm are signed to the petition.

Mr. Leggett said that the petition was signed by his brother in the name of the firm, and that his brother knew more about it than he did.

"You know, however, I presume," said the reporter, "what the petition refers to?"

"Oh! certainly," answered Mr. Leggett. "It refers to the fact of Mrs. Putnam having received money from the Foster family to sign her name to the letter."

"What do you know of this transaction?"

"Mr. Blank, a wealthy man, was the person employed by the Foster side to negotiate the matter. Mrs. Putnam was then offered money to give her name to a letter asking Foster's reprieve. She went to Mr. Allen and asked his advice. I understand he advised her not to take the money, but if she were to do it to ask a good price. She asked if \$15,000 would be enough, and he said the family could as easily pay \$25,000. I believe it was at this last interview that Mrs. Putnam allowed her name to be used, because she showed her disposition to take the money and disregarded Mr. Allen's advice to refuse it."

"What do you think of Mrs. Putnam's action in this matter?"

"I think that very few women would do it, and I look on it as being rather queer of her to do. But then, on the other hand, she is poor, her husband's estate having been bankrupt at the time of his death."

"Is Mr. Allen's course in the matter commented upon at all?"

"There was no obligation upon him to keep the matter secret. In fact, I dare say, he thought it his duty to make it public. I look on it this way, that while I think it my duty to let the Governor know the facts of the case, I do not care particularly to see Foster hanged. About that I shall be perfectly satisfied as the Governor decides."

"But how is the Governor to know the circumstances of the affair? They are not given in the petition. They are simply hinted at."

"Mr. Putnam's brother is to present the petition to the Governor, and while presenting will explain the whole matter to him about the paying money to Mrs. Foster for her name."

"You know, then, that this money has been paid?"

"There is no doubt of it. Mr. Allen knows all about it, and so does Mr. Henneberger, the dead Mr. Putnam's former partner. In fact, they know a great deal more than I do about it. But the actual fact of buying is a matter now of too public notoriety to admit of any doubt."

Mrs. Putnam, the widow of Foster's unfortunate victim, was very shy and reticent concerning the rumors that she received \$15,000 for writing a letter to Governor Dix asking for a commutation of the death sentence of the condemned murderer. Her reticence, in fact, amounted almost to an admission that she was well paid for the use of her name to save the murderer from the scaffold. Since she has been in Providence with her father, Mr. Scott Smith, she kept herself aloof from all society, except her most intimate relatives and friends.

It is but reasonable to suppose, from this conduct, that the stories of her having been paid well for writing the Governor Dix letter are essentially correct. If they were false it is probable that she would hasten to deny them.

A LETTER FROM WM. FOSTER'S FATHER.

MY DEAR SIR: Permit me to contradict the report which appeared in the papers of Thursday last, that the sum of \$15,000 had been paid to Mrs. Putnam for her letter to the Governor on behalf of my son, William Foster. I was out of the city on that day and only reached home late at night, hence my delay in making this denial. I am not aware that I ever saw Mrs. Putnam; but I deny most positively that I have offered or paid her any sum whatever, and I do not know that any of my friends have offered or paid her anything for her letter. I believe the letter was prompted by the great kindness of her heart.

Very respectfully yours,
March 12, 1873.

JOHN FOSTER,
218 East Eighteenth Street, City.

MRS. PUTNAM'S DENIAL.

PROVIDENCE, R. I., March 12, 1873.

DEAR SIR: Will you allow me to correct the statement of yesterday's papers that I had received money for writing a letter to the Governor of New York asking the commutation of William Foster's sentence. The statement is wholly false. I have never received money nor have I been offered a bribe in any form. The letter was my own and expressed my honest feelings.

ELLEN L. PUTNAM.

SIR: The statements in the daily press that Mrs. Putnam received a bribe from the friends of William Foster through me are not correct. I have not known or said I knew that she was paid any sum of money for her petition to the Governor for the commutation of Foster's sentence.

March 14.

WILLIAM L. ALLEN,
No. 67 Pearl Street, New York.

JUDGE PIERREPONT ON THE CASE.

To His Excellency, JOHN A. DIX, Governor of the State of New York:

Whether William Foster shall, within a few days, be put to death, in accordance with the judgment of the law, or whether his sentence shall be commuted to imprisonment for life, is the grave question presented to Your Excellency.

The record of your past life assures the public that, when the case shall have been fully examined, you will proceed to discharge your duty, however painful, and that you will shrink from no just responsibility to escape the temporary censure of unjust criticism.

The highest tribunal in the State has decided that, upon the case presented by the "Error Book," the conviction was not unlawful; and, in my judgment, the legal questions upon which that eminently just and able Court have passed are not open to review by Your Excellency.

According to a promise made when you were in New York severa

days ago, I have given the entire case the most careful investigation, and have brought to bear upon it the best judgment of which I am capable.

THE FACTS.

On the evening of April 26, 1871, Mr. Putnam, the deceased, was riding up town in a Broadway car, having under his care Mrs. Duval and her daughter. At Seventeenth Street William Foster, a total stranger to Mr. Putnam, stepped upon the forward platform of the car, alongside the driver. As they reached the Gilsey House, about Twenty-ninth Street, the daughter's attention was called to the new clock on the building, and she went to the forward door of the car to look at the clock, and Mrs. Duval went also to look at Helmbold's new store in the same building, and as Mrs. Duval sat down Foster, from the front platform, as she says, "looked in the window and sneered at my daughter and laughed."

After this Foster opened the door several times and rudely looked in. Mr. Putnam went to the door and said:—"I will not allow these ladies to be insulted; they are in my care, sir." Mr. Putnam, continuing his rebuke, went out upon the platform and closed the door behind him, and a warm altercation took place. Mr. Putnam returned into the car, and, soon after, Foster entered, and so behaved that the conductor came up and ordered Foster to sit down and be quiet. He took his seat, and began "laughing and jeering." Mr. Putnam said:—"Had I known you were in liquor I would not have spoken to you," and turned his back upon him. Foster retorted by a vulgar threat of what he would do to Mr. Putnam when he left the car.

The car soon reached Forty-sixth Street, and Mr. Putnam got out, and as he was assisting Mrs. Duval and her daughter to alight Foster struck him with a car hook upon his head, causing a wound of which he died three days after. Soon after this occurrence Foster admitted that he made the assault upon the deceased, but said "he guessed he did not hurt him much."

Foster was arrested, at his own house, the same night, between two and three o'clock, with all his clothes on, and still beastly drunk.

Within twenty days after Mr. Putnam died Foster was indicted by the Grand Jury, and put on trial before the petit jury for the crime of murder. The jury were out part of one day, all night and until half-past ten o'clock on the following morning, "when the jury rendered a verdict of murder in the first degree, with a recommendation to mercy."

Judge Cardozo presided at the trial. The prisoner's counsel, Mr. Stuart, asked that the jury be polled.

The jury was then polled, when each of the jurors answered in the affirmative that such was his verdict.

Mr. Stuart—Before this jury is discharged, I ask the Court to interrogate them to this fact: Whether or no that verdict has not been arrived at upon a compromise and consultation, and upon the condition that a recommendation to mercy should be made?

The Court—I decline to poll the jury in any other way than the usual one. The verdict stands recorded.

By our statute the crime of murder in the first degree is punishable with death.

The crime of murder in the second degree may be expiated by suffering imprisonment for ten years.

The jury were well aware of this law. They did not believe that Foster had “premeditated designs to effect the death” of Mr. Putnam; they feared that if found guilty of murder in the second degree Foster would be pardoned after a short imprisonment and the ends of justice defeated; and they were assured and believed that if the prisoner were found guilty of murder in the first degree the sentence of death would be commuted to imprisonment for life if a recommendation to mercy accompanied their verdict. Upon this theory they agreed upon their verdict, and, without such understanding, it is entirely clear that a verdict of guilty of murder in the first degree could not have been obtained. The jury believed that a verdict of murder in the second degree would bring a punishment quite too light for the crime committed. They knew that a verdict of murder in the first degree, which involved a finding of “a premeditated design to effect the death” of Mr. Putnam, was not in accordance with their view of the facts in the case at all. But under the belief, and a lawyer’s assurance, that a recommendation to mercy accompanying their verdict of murder in the first degree would necessarily result in imprisonment for life, they rendered the verdict which stands recorded.

All doubt upon this question is now removed by the affidavits and statements of the jurors, which we will presently consider.

Under the law there can be no such crime as murder in the first degree, unless it clearly appears beyond all reasonable doubt, that the homicide “was perpetrated from a premeditated design to effect the death of the person killed.”

And in this case the Court laid down the law in these words

“Before the jury can convict the prisoner of murder in the first degree they must find from the evidence that the prisoner had a specific, premeditated design to effect the death of the deceased; that they must be able to say, beyond a reasonable doubt, that such was his specific design.”

“If the jury find that the prisoner, when he struck deceased, intended to inflict bodily harm upon deceased only, the death resulting from such assault does not amount in law to murder in the first degree.”

“If the jury have a reasonable doubt derived from all the evidence as to what intent the prisoner had in assaulting deceased, they are bound to give the prisoner the benefit of that doubt and find the lesser intent.”

“To make out in this instance a case of murder in the first degree one kind of malice is essential, viz., a premeditated design to effect death;

no other species or quality of malice is sufficient, and this malice must be proved, affirmatively, to have existed to the satisfaction of the jury beyond a reasonable doubt."

"Whatever the intention of Foster in assaulting Putnam may have been, if it was not a premeditated design to take Putnam's life, it matters not how long the intention had been entertained, it does not constitute murder in the first degree."

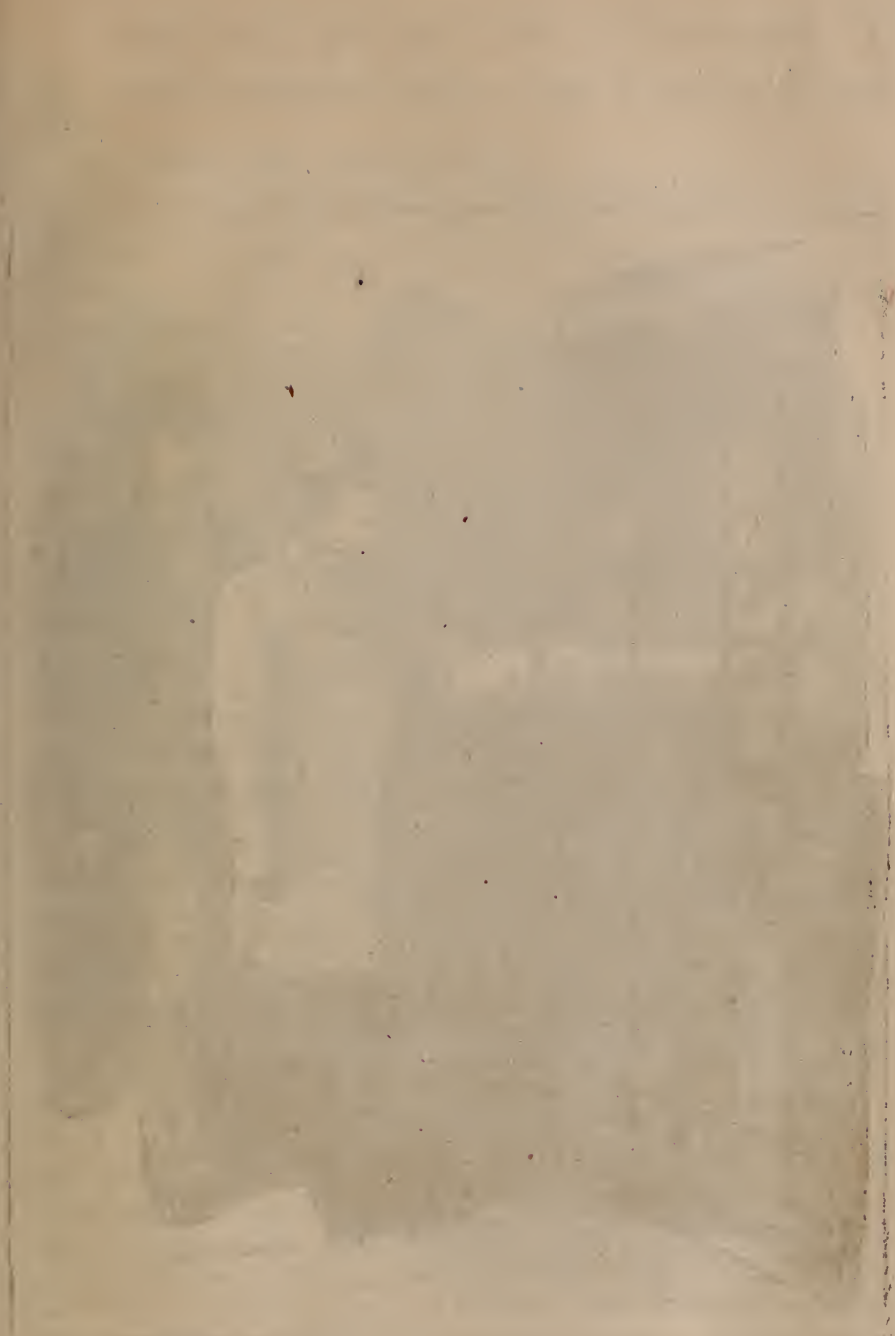
"The fact that the prisoner came forward voluntarily, and gave his name as that of the unknown man who made the assault, is one proper for the jury to consider, as bearing upon the question whether he had an intention to make a fatal assault."

Before the Court of Appeals nothing went but the simple record of the trial and the final verdict of the jury; and the Court were asked to determine whether any error in law had been committed on the trial, demanding a reversal of the judgment below. The Court found no such error, and its judgment is conclusive so far as the legal questions raised by the record are concerned. But outside the record, and since the record was made up, facts have come to light which, had they appeared upon the record, would certainly have reversed the judgment. It now appears beyond dispute, that the jury did not believe that Foster intended to kill Putnam at all—much less that the homicide "was perpetrated from a premeditated design to effect the death of the person killed; and that the jury, after being out all night, agreed to bring in a verdict of murder in the first degree, with a recommendation to mercy, under the full belief that there was "no premeditated design to effect the death" of Mr. Putnam, but under the influence of a credited assurance of one of their number, himself a lawyer, that such a verdict would necessarily carry with it the imprisonment for life of the accused.

Suppose, when the jury came into Court for further instructions, after being out all night and unable to agree, they had asked the Judge whether, if the jury believed that when Foster struck Putnam, he had no premeditated design to effect the death of Putnam, but to cruelly beat him, they could, with that conviction on their minds, bring in a verdict of murder in the first degree, accompanied by a recommendation to mercy, which would result in Foster's imprisonment for life, and the Judge had said yes, and the verdict had followed, which was recorded in this case, it is entirely certain that the Court of Appeals would forthwith, upon such facts appearing upon the record, have pronounced the verdict illegal.

Nothing of this kind was before the Court of Appeals; precisely this is before you.

I append the affidavits and statements of the jurors, and of the Assistant District Attorney, who carefully watched the trial of the cause. These show, beyond all peradventure, that none of them, with the exception of a single juror, believed that Foster, who had never seen the deceased in his life until a few minutes before the fatal blow, committed



STAND IN THE FIELD
AND SEE THE FENCE



FOSTER'S LAST DAY ON EARTH.

Foster's letzter Tag auf der Erde.

the act with "premeditated design to effect the death of the person killed."

The Assistant District Attorney says:—

"While I was Assistant District Attorney, I watched the trial and subsequent steps of this case with great interest; my opinion, formed from the evidence disclosed upon the trial, has never changed, and I have no hesitation in expressing it to you. I do not believe that there is one particle of evidence to justify the belief that Foster premeditated or contemplated murder—or, indeed, that he intended to take life."

Mr. Samuel Dowding, one of the jurors, swears:—

"That deponent and Robert Usher, Jr., another of said jury, were firmly convinced, upon the evidence, that said Foster never intended to kill deceased, Avery D. Putnam, for the murder of whom he was then on trial, and only consented to the verdict rendered under the impression that the recommendation to mercy, which accompanied it, would necessitate the imposition upon said Foster of the punishment for murder in the second degree, to wit: imprisonment for life; and that, if they had learned their error before the rendition of said verdict, they would never have consented to it; that during such deliberation, deponent also asked George K. Chase, Walter F. Bartlett, and one or two others of said jurors, whose names do not now recur to deponent, whether, before God, they thought Foster intended to kill deceased, and they said they did not think so."

Mr. Robert Usher, one of the jurors, says:—

"In the jury-room I was, as I am now, of the opinion that the said defendant did not intend to kill the deceased, Avery D. Putnam, for whose murder he was then upon trial; and that, during such deliberation, I steadfastly adhered to the opinion that the defendant was not guilty of any greater crime than murder in the second degree; that my opinion was shared with others of the said jury—Mr. Dowding and Mr. Chase being of the number; that certain of the jury also said that they would find a verdict of murder in the second degree, if they did not feel that the Government was not to be trusted, and that said defendant would be pardoned out of State Prison, and be again let loose upon the community; that, finally, it was represented by Mr. Rogers, one of the jurors, that he was a lawyer, and that a verdict of murder in the first degree, coupled with a recommendation to mercy, would ensure to said defendant a rehearing of his case before the Governor, whereby the impression of myself and some of my fellow jurors, that a naked verdict of murder in the first degree would leave said defendant remediless, and necessarily result in his execution, was removed, and the jury rendered the verdict of murder in the belief that Governor Hoffman would have an opportunity to correct and remedy any error they might in their ignorance of law commit."

The decision of the Court of Appeals affirmed the judgment of the Court below, whereby William Foster was condemned to be hanged for the murder of Avery D. Putnam. But that decision would have been

precisely the same if Mr. Putnam had appeared in Court and proved that he was still alive and had only been spirited away by those who wanted to possess his estate. The Court of Appeals could only pass upon the record, and must have affirmed the condemnation to death of Foster for the murder of Putnam, who stood alive before them. The rigid rules of law do not allow an Appellate Court to look beyond the record, even though the Court might behold the living man for whose murder the accused was condemned to die.

It is for this very reason, and to meet cases like the one before you, that the high Executive is clothed with extraordinary powers adequate to correct all such mistakes and to consider all facts and circumstances outside of the legal record in furtherance of the highest justice and beyond the functions of a court of law. It is a well-known maxim that it were better that ninety-nine guilty men should escape than that one innocent man should suffer; and also, that where a human life is involved, every doubt should be resolved in favor of the accused and of mercy.

If William Foster is put to death for the premeditated murder of Mr. Putnam very few of the reflecting community will not believe that he was executed for a greater crime than he in fact committed, and to avoid the repetition of such an act of injustice the aggrieved sentiment of the public may demand the abolition of the death penalty entirely.

Foster was convicted a few days after Mr. Putnam died, while the public mind was seared and alarmed, and the verdict was not in accordance with the real convictions of the jury nor in harmony with any reasonable deductions from the evidence.

After a most careful examination of the whole case I am convinced that this drunken man, who had never seen the deceased until ten minutes before he made the fatal assault, had no "premeditated design to effect the death of the person killed," and that in view of the mistaken ideas under which the jurors rendered their verdict it would be in furtherance of justice to commute the sentence of death to imprisonment for life.

I approached this case with a prejudgment quite against the prisoner. Having read of the brutal assault and its circumstances the first impulse was to feel that Foster ought to be hanged; but when I came deliberately to consider the law and the subsequent revelations which the jurors had made I became convinced that the hanging of Foster would savor more of vengeance than of justice, in which no grains of mercy could be found, and the reaction likely to take place in the public mind might cause a repeal of those laws which are now a wholesale restraint upon evil men.

If Foster is imprisoned for life, public justice would be vindicated; if he is put to death for a crime greater than that of which he is guilty, it will be too late to retrieve the fearful wrong, and the intelligent public

will not be satisfied with the execution. Even were it doubtful whether Foster struck the blow with a premeditated design to murder Mr. Putnam, the doubt should, upon every principle known to the administration of civil justice, be resolved in favor of commuting the sentence of death to imprisonment for life.

Very respectfully yours,

EDWARDS PIERREPONT.

GOV. DIX'S REPLY TO THE SHERIFF.

The following telegraphic correspondence passed between Sheriff Brennan, of New York City, and Governor Dix :—

SHERIFF'S OFFICE, NEW YORK, March 19, 1873.

GOVERNOR JOHN A. DIX :

Do you propose to send me a communication in reference to the case of Foster ? As time presses, please answer.

M. T. BRENNAN, Sheriff

ALBANY, March 19, 1873.

M. T. BRENNAN, Sheriff New York City :

I have no communication to make.

JOHN A. DIX.

GOVERNOR JOHN A. DIX'S DECISION.

HIS AUTOGRAPH LETTER TO REV. DR. TYNG. HE WOULD NOT ANNUL THE "DELIBERATE AND WELL-CONSIDERED DETERMINATIONS OF JURIES AND COURTS."

THE GOVERNOR REVIEWS THE EVIDENCE.

STATE OF NEW YORK, EXECUTIVE CHAMBER, }
ALBANY, March 17, 1873. }

REVEREND AND DEAR SIR :—I have given to the representations contained in your letter, my most earnest attention, and I have carefully examined all the testimony, the official papers, and all the statements which have been made to me in the case of William Foster, who lies under sentence of death for the crime of murder.

In a recent case, not unlike his, I said I was willing to have it understood that circumstances of a very extraordinary nature would be needed to induce me to interpose for the purpose of annulling the deliberate and well-considered determinations of juries and courts.

I find no such circumstances attending the criminal act of Foster, his trial, the verdict or the decision of the courts, by which the record was reviewed.

The public interest which has been and is still felt in this case, the extraordinary efforts which have been made to procure a commutation of the sentence, the publicity given to these efforts, and the long period of time—now nearly two years—which has elapsed since the crime was committed, make it proper for me, before communicating to you my final decision, to state the circumstances and the considerations on which it is founded.

Foster and Putnam, his victim, met in a railroad car in the city of New York. The latter had two ladies in his charge, and, in consequence of certain annoyances by the former, remonstrated with him on his conduct. It does not appear that Putnam offered him any provocation. Foster, who

had been on the front platform, entered the car and sat down by Putnam, asking him several times how far he was going; and when the latter declined to answer, and turned away, obviously desiring to avoid a controversy, Foster said, "Well, I am going as far as you go, and before you leave this car I will give you hell."

He then returned to the front platform, and asked the driver if he had a car-hook, saying "he would learn him (meaning Putnam) his business when he gets off the car; he would learn him to keep his place." When the car stopped, Foster seized the car-hook, telling the driver, who tried to stop him, to "go to hell," walked the whole length of the car on the outside, attacked Putnam, who had just got out, and struck him two blows on the head, one of which was fatal.

They were together, after the first conversation between them, while the car was passing from the vicinity of Twenty-ninth street, to Forty-sixth street, not far from three-fourths of a mile, embracing too long a period of time to ascribe the criminal act to the sudden impulse of passion, or to exclude the presumption of premeditated design. The fatal blow was given with an iron rod, which was proved by the result to be a deadly weapon. It is more than two feet in length, having at one end a double coil of iron, from an inch and a quarter to an inch and a half in circumference, and is capable, in the hands of a man of ordinary strength, without any extraordinary effort, of fracturing the skull at every blow. Foster had been a conductor on one of these street cars; he must have known the capacity for injury of the weapon he deliberately chose, and the jury might rightly presume that he intended to do what he took the most effectual means within his reach to accomplish.

The murder was committed on the 26th of April, 1871; the trial began on the 22d of May ensuing; the verdict was rendered on the 25th, the sentence passed on the 26th, and the 14th of July was fixed for his execution. Early in July application was made for a commutation of the sentence, and on the 6th a writ of error was filed, and a stay of proceedings granted. On the 21st of February, 1872, the judgment was affirmed at the General Term in the city of New York, and the 22d of March was fixed for the execution of the sentence. The application for a commutation was renewed, and was denied by my predecessor on the 4th of March. On the 11th of that month, a writ of error to the Court of Appeals, with a stay of proceedings, was granted, and on the 21st of January, 1873, the judgment was affirmed by the last-named tribunal.

Thus it appears that all the remedies provided by law for contesting the rulings of the Judge before whom the trial took place, have been exhausted, and that his action has been affirmed by the two judicial tribunals having cognizance of the case—the latter the court of last resort.

The question presented to me is, whether I shall interpose the executive authority of the State, and commute the penalty of death, which the law awards to murder, for imprisonment for life.

In support of the application, it is urged that the verdict was accompanied with a recommendation to mercy, and that it is the duty of the executive to consider the one as a part of the other. This is, no doubt, so far true that it should commend the case to his most careful and deliberate consideration. It is an appeal which he should recognize by reviewing all the circumstances, not only with a willingness, but with a desire to find in them a justification for the exercise of his clemency. There is no responsibility under the law on the part of juries in making such recommendations. On the other hand, the responsibility of the Executive in acting upon them is very delicate, whether they be considered in reference to the opinions of the jurors who make them, or to considerations of public policy, which, as a conservator of the good order of society, he is bound to regard in applications to mitigate penalties annexed by the statute to crimes. My predecessor, no doubt

under the influence of such considerations, or from the belief that the criminals were justly condemned to death, refused, in three instances, to commute their sentences, although recommendations to mercy accompanied the verdicts.

The application is supported on another ground, which is more embarrassing, and which has been to me a source of great anxiety in coming to a right decision. A large majority of the jurors, part of them by affidavit, and others by written statements, declare that some of their number did not believe Foster intended to kill Putnam; that they thought imprisonment for life as great a punishment as he deserved, and that they would not have agreed to render the verdict of murder in the first degree, involving the penalty of death, if they had not been assured by one of their associates, who professed to have a knowledge of the law, that such a verdict, accompanied with a recommendation to mercy, would insure a commutation of the sentence. With two exceptions, these statements are all recent, and the two exceptions bear date more than ten months after the murder was committed. Two applications, as already stated, were made to my predecessor for a commutation of the sentence—one as late as March, 1872; and there is no evidence that any such statement was presented to him, nor is there any reference to one in his letter denying the latter application.

It is a settled principle in this State, that *ex parte* affidavits or statements by jurors, impeaching the verdicts they have rendered under the responsibility of their oaths, will not be received by the Courts in support of applications for new trials. Indeed, I believe it may be stated as a rule far more widely accepted, that the Courts will not suffer a jury "to explain, by affidavit, the grounds of their verdict, to show that they intended something different from what they found." Whether the rejection of such affidavits and statements be founded upon the belief that, by reason of the protracted deliberations of juries in many cases, and the differences of opinion to be reconciled in coming to the requisite unanimity, they could be easily procured; or whether they be rejected upon the ground that statements made under no responsibility cannot be permitted to overthrow adjudications made under the highest, it can hardly be doubted that they would tend, if admitted, to unsettle the administration of justice, and render executions under capital convictions nearly impossible. Some of the reasons which govern Courts in refusing to receive such statements in support of applications for new trials ought, in my judgment, to govern the Executive in applications for the commutation of sentences. In the Judge's charge to the jury, he said: "Before you can convict the prisoner of murder in the first degree, you must be satisfied from the evidence, not only that Foster killed Putnam, but that he did so with a premeditated design to effect his death;" and he was thus convicted by the jury upon the responsibility of their oaths. Ought the same persons to be permitted, nearly two years afterwards, to show, by *ex parte* affidavits and statements, made under no legal responsibility, that their verdict was untrue?

The precedent of admitting after-revelations of the secret consultations of the jury-room, for the purpose of annulling verdicts rendered as true under the solemnity of an oath, would be perilous in any condition of society, and in the present defiant reign of crime, such a precedent would be fraught with infinite danger to the public order.

Every proper appliance which wealth and the influence of a most estimable family could command, has been employed to save Foster from the scaffold. The case has been carried through the Courts by eminent counsel, the opinions of gentlemen learned in the law, and earnest applications from respected clergymen and citizens in good standing, have been brought before me, and the widow of the victim has come forth from her solitude to plead for the life of her husband's murderer. I have given to these appeals my most thoughtful consideration. If there were any reason to doubt that

the law was rightly ruled at the trial, or that the evidence fully warranted the jury in rendering the verdict of murder in the first degree, I would give the criminal the benefit of that doubt. But with a firm conviction that there was no error in either, and that there is nothing in his case which can justly commend it to Executive clemency, I cannot interpose to mitigate his punishment.

I am pained to say this to you, appreciating as I do your sincerity, and the purity of your motives; and I desire to announce my decision to yourself and the other respected clergymen who have joined in interceding for him, in the spirit of kind consideration due to those whose sacred vocation teaches them to look with tenderness upon the frailties of others.

To the representations of the gentlemen in secular occupations, who have appealed to me in his behalf, I have paid the same respectful consideration; but I am constrained to think that they have neither given sufficient forethought to the consequences of what they ask, if it were granted, nor considered that, with the best intentions, we may, by misdirected sympathy, contribute, unconsciously, to endanger the public safety and our own.

I am asked, in disregard of the evidence and the judgment of the highest judicial tribunal in the State on the law, to set aside the penalty awarded to the most atrocious of crimes. It seems to me that the inevitable effect of such a proceeding on my part, under the circumstances of this case, would be to impair the force of judicial decisions, and to break down the barriers which the law has set up for the protection of human life. To this act of social disorganization, I cannot lend the executive authority confided to me by the people of the State. I deem it due to the good order of society, to say that, so far as depends on me, the supremacy of the law will be inflexibly maintained, and that every man who strikes a murderous blow at the life of his fellow, must be made to feel that his own is in certain peril. If we cannot, by firmness of purpose, attain this end, we may soon be forced to acknowledge the disheartening truth that there is nothing so cheap or so ill-protected as human life.

I address this letter to you, because you were the first to apply to Governor Hoffman, and the first to apply to me for a commutation of Foster's sentence. It is sent in sincere sympathy with you, his early spiritual adviser, and with his afflicted family, some of whom I know and hold in the highest esteem, but with the clear conviction that I am performing an imperative duty.

I am, dear sir, with unfeigned respect and esteem, yours,

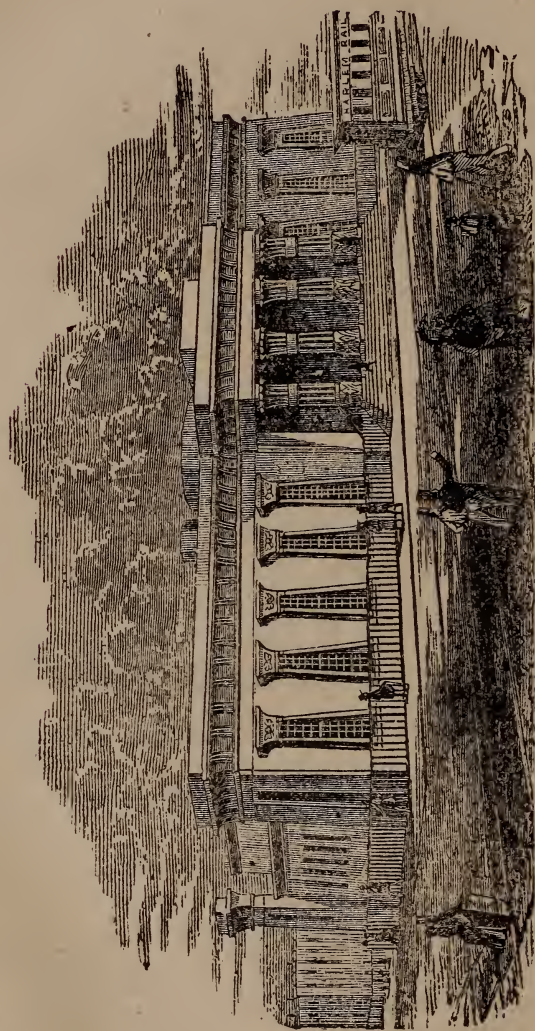
JOHN A. DIX.

REV. STEPHEN H. TYNG, D. D.

FOSTER IN THE TOMBS—VISITORS EXCLUDED FROM THE PRISON.

Foster, the condemned murderer, passed a very quiet day, largely owing to the fact that there were so few visitors admitted to the Tombs. During his incarceration, Foster has never expressed any particular desire to take physical exercise of any sort, and the only relaxation he has enjoyed outside the narrow confines of his cell, has been an occasional walk in the corridor. During the past few days, however, he has been unable to enjoy even this slight privilege, in consequence of the very great influx of visitors, most of whom come to gape and wonder, and look sympathizingly at the doomed convict. For this reason, the Commissioners of Charities and Correction transmitted to Warden Johnston, instructions directing that during the week no visitors be permitted to the Tombs, except such as are authorized by the Sheriff, and by special pass from the Commissioners. This is a very prudent and proper course, under the circumstances.

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CORRECT VIEW OF THE NEW YORK TOMBS. (*From a Photograph.*)
Correkte Ansicht der New York Tombs. (*Nach einer Photographie.*)

William Foster was visited by his wife, his father, his brothers, and Rev. Dr. Tyng; but all their interviews with the unhappy man were in the privacy of his cell. His general health is good, though Dr. Nealis reports the prisoner's appetite as failing to some extent.

THE NATIONAL CAPITAL SPEAKS—GOVERNOR DIX SUSTAINED.

WASHINGTON, D. C., March 16, 1873.

MESSRS. BARCLAY & Co.:—

I have read your publications for years as a source of reliable intelligence, and a mirror of the public opinion. Your elevated stand against the atrocious car murder is approved here by all whose opinions are worth a straw. All the facts are familiar to your readers in this country and Europe. When first announced, the ferocious deed shocked the community, and every newspaper denounced it as a diabolical and unpardonable offence, amenable to swift condign punishment on the gallows. Prompt trial, condemnation and sentence followed. One tribunal after another, through all the forms of delay, confirmed the first just sentence. Meanwhile the Governor proclaimed his firm resolve to enforce punishment in such cases, as examples to such murderers as of late had relied on pardons. This was deemed reliable mercy to the public at large.

Thus ended the first act of this deplorable New York domestic tragedy. But as the assassin claimed to be favorable to Sabbath schools, some of the ultra sticklers for church rights and reservations, forced a violent crusade against capital punishment generally, as established by law, and especially against the just punishment of this man. If he were a member of the church, so much the more reason for him to obey Holy Writ, and avoid murdering his fellow man. But he had rich relatives, and it was rumored that money was in the scheme of rescue, and that conspiring interlopers were ready to shell out liberally to rescue the culprit from the gallows, and we hear rumors of bribes for a petition to the Governor. Meanwhile, strange to say, "a change has come o'er the dream," and some of the city press, which were first so rampant to condemn and hang, are now for commutation and final escape in one of the most diabolical cases on record. Bah!

Whether any bribe was actually advanced, cash in hand, I express no opinion. Promises may have proved availing. Be this as it may, high crimes must not be compounded by parties interested. Murder must not be expunged for pelf by persons injured. Hanging is neither executed nor prevented for the accommodation of private persons, however great the reward, but enforced for the public safety. If wealthy relatives are to have sway with magistrates, the tribunals will be trampled in the dust, and what then will become of the State and the dignity thereof? The Governor has but one straightforward course to pursue and sustain the tribunals. He should indignantly cast behind him all personal and outside considerations, as did the immortal patriot, Lucius Junius Brutus, when he condemned his own son to death for the safety of Rome. Here is a memorable precedent for the adoption of the Governor in enforcing condign punishment on an offender doomed to death by all the tribunals.

OLD SUBSCRIBER.

THE GOVERNOR POINTS THE LINE OF DUTY.

We have a Roman in our midst. Viewed by the aid of General Dix's refusal to commute the sentence of Foster, the action of Brutus in striking down his friend is robbed of a suspected selfishness, and indubitably stamped with patriotism. Whoever has had a wavering, imperfect notion of duty before, let him contemplate this action of General Dix, and he will view it

in all its crystalline beauty, "unmixed with baser matter." Look at the grandeur of the picture! A grief-stricken father begs for the life of a son from another father with power to grant the prayer, whose venerable head is at that very moment bowed in agony over the death of his own son, and is refused. Truly, the maxim, "Let justice be done though the heavens fall," no longer obsolete, has been electrified into new life; and let all the people good and true rejoice thereat. In consideration, therefore, of his incalculable services to the nation in times of peace and war, and with all the proper humility of a private citizen, I nominate General John A. Dix for President of the United States.

S. H. T

NEW YORK, March 15, 1873.

THE GOVERNOR'S ACTION APPLAUDED.

I trembled in fear tha' our Governor would not do his duty in the Foster case. As a lover of justice, and hater of all maudlin sentiment, I breathe freely again. John A. Dix has proved himself to be a man; would he were forty years younger. Cannot the public have an opportunity of re-endorsing him at the Cooper Institute, or some other place, and express its opinion on this and other kindred topics freely?

LEX.

THE RELIGIOUS PRESS AND ITS TOPICS.

Our religious contemporaries did not appear to be inspired during March with any general or striking topic of discussion, although the Foster case naturally furnished a text for comment in the columns of some of them. Their tone collectively on the subject may be regarded as in favor of allowing the law to take its course.

The *Golden Age* argues that "nine-tenths of all the murders which have been brought to the notice of the newspapers, during the last five years have been the result of just as little motive—of just as little pre-intent to kill—as in this case" of Foster. The *Age* proceeds:

"In other words, they have been the rash acts of drunken men who, in their brawls and under the semi-insanity which liquor produces in a heated brain, have struck blows with the same blind, brutal, unreasoning strength which led Dr. Tyng's Sunday school scholar to kill a citizen without deliberately meaning to do it. If Foster justly escapes the gallows (and it is just that he should), then the large proportion of his fellow criminals should escape with him. There is equal justice on their side. His case differs from the majority of murders only in the fact that most criminals do not sin against such light as Dr. Tyng's religious instructions furnish, and therefore do not bring upon themselves so high a degree of moral condemnation for their crime."

The *Age* profoundly hopes that Foster's case, which it regards as a fair and average type of manslaughter, neither better nor worse than the majority of instances, may lead a humane community to consider the wisdom of commuting, by law, the death penalty to life imprisonment.

The *Independent* declares it is not thirsting for blood, but it protests against that sentimentalism in behalf of individuals which jeopardizes the safety of the community by its reluctance to inflict penalty. It does not believe it to be wiser than the Courts that have already declared Foster

guilty of murder in the first degree. "There is no use of capital convictions at all," concludes the *Independent*, "if they are to be rendered abortive by gubernatorial clemency. The law that fails when it comes to the crisis of execution is simply a sham, and the public sentiment that tolerates such shams greatly needs reforming."

The *National Baptist* sums up a review of the Foster case by remarking that "it is not on the ground of vengeance; it is not as an act of satisfaction to the ghost of the murdered man; it is simply from a regard for the welfare of the living, from a regard for the safety and happiness of the millions of innocent citizens, that we express our most earnest hope that the Governor will let the law take its course."

The *Freeman's Journal* (Catholic organ) has its death grip on the condemned Foster and the Rev. Dr. Tyng, and smashes away generally about car hooks and iron rods. In an editorial leader it accuses the Rev. Dr. Stephen H. Tyng of a "very gross indecency," says that clergyman has just "added a new feather to the tar surface with which his old reputation is besmeared," in having the execrable taste "to inform Governor Dix that the family of the convicted are all members of our one household of faith." Suppose, suggests the *Journal*, that

"In place of John A. Dix it had been Francis Kernan that had been elected Governor. Suppose it had been some poor wretch who had been a Catholic, whose life was trembling in the scales of executive judgment! And suppose some Catholic pastor had ventured the bold indecency of this Dr. Tyng to Governor Dix, and reminded Governor Kernan that the man whose case was before him, to be decided on principles of law, was one of a family who 'are all members of our one household of faith.' We are very certain that such a letter would not have weighed a feather, either for or against the legal merits of a case for executive clemency; but, if we could suppose so gross an impropriety on the part of a Catholic priest, we think Mr. Kernan would not have suffered such an improper appeal to have passed without a rebuke to its author as public as the offence."

The *Journal* also publishes the following advertisement extraordinary, under the heading "Car Hooks Wanted":—

"WANTED—Iron rods, well wrought and not liable to snap—regulation length of dress sword, thirty-nine and a half inches. A large supply will be required as soon as the order for them is sanctioned by Governor Dix. After Governor Dix's approval they will present the following advantages: First, except in the hands of an expert swordsman, a car hook will be much more effective than a rapier. The sword requires its handler to know how to deliver its edge or its point; but a car hook is edge all round! Second, by suprajudicial argumentation through hired journals and feed lawyers, the car hook is declared not to be a deadly weapon! The advantage of this point, for men-hunters, is not to be overlooked. Persons ready to supply in large quantities will please apply to Rev. Stephen H. Tyng—and look for his address in the New York Directory."

The *Journal* is no King Charles spaniel—not it. But it does dislike the unfortunate Rev. Mr. Tyng—there is no mistake about that.

The *Jewish Messenger* descants upon "Mercy for the Merciless" and

affirms that "the safety of the people depends upon justice being sternly rendered the men who resort to violence, and who are the natural enemies of decency, order and quiet."

THE DECISION OF GOVERNOR DIX—"LAW AND ORDER MUST PREVAIL, COST WHAT IT MAY."

From the broad differences of opinion on the matter among the press previous to the final death decree, it might have been expected that the Governor's determination not to interfere with the execution would have produced a variety of comment. A unanimous acquiescence in its justice, instead, seen everywhere. To the inflexible Governor this must be especially gratifying. It is a recognition of the highest conscientiousness and fidelity to duty in one of the most painful positions wherein the Executive of a State ever found himself. The care and intelligence he brought to bear upon the subject, and his firmness in resisting all extraneous appeals when once his convictions were formed, will elevate him higher in the estimation of his friends, while equally commanding the respect of his bitterest enemies.

We are rejoiced to observe this unanimity among the press. It indicates a healthy tone in those who do so much to control and direct public opinion. To read the utterances of some journals a few days ago beside those made since the decision will show how powerful a lesson can be learned from a single action performed by a man placed under such awful responsibilities as General Dix. Among the best authorities on law in the State the Governor's decision has produced the same impression that it has made upon the general public. The members of the Constitutional Convention remaining in Albany called upon the Governor yesterday and congratulated him upon the sound logic in law and equity which enabled him to clear the subject of its mists and decide it on its merits alone. But the Governor, in face of all this expression of lay and professional approval, still preserves his dignified attitude of an unimpassioned Judge of the last resort. To a correspondent he made an explanation of his course, whose words will stand out in flaming letters beside the apophthegm which became so famous during the civil war. They should be graven on the minds of the criminal classes. To the law-abiding citizen they will be a stern promise of justice when crime attempts to spread its baleful sway. He said: "I made the decision I have made utterly regardless of the clamors and so-called influences which have been brought to bear to secure the commutation of the sentence of the prisoner. I have looked upon the case and decided upon it after the most careful study and deliberation, solely on its merits. Law and order must prevail, cost what it may. The position of Governor often puts upon him duties that are hard to perform—sad duties; but for all that they are duties from which he cannot shrink. I will not shrink from them." These are noble, fearless words, and they are the death-knell of the hopes that count on the majesty

of the law in matters of human life being destroyed by a mistaken lenity. The promise that "law and order must prevail, cost what it may," is, we believe, certain to be kept while it lies in such hands.

To this decision we can point for our justification in the unflinching course of demanding justice upon the murderers who have made life so unsafe in our cities, and whose long impunity has lowered the respect for law in what should be its most impressive forms. We feel pity for the family of the wretched being condemned to an ignominious death. Their sufferings, as well as his own, are the sad but necessary consequences of his reckless disregard of what pain and suffering his crime would cause to the victim and his near and dear ones. This branching out of the penalty of murder radiates not merely from the murderer, but from the victim. The family of the homicide, in addition to acute grief for the degrading doom of one they love, feels itself crushed under a sense of shame, which, however illogical, will assert itself. To the family of the victim, outside of the anguish caused by his murder, there is another cause of grief to which the world does not give sufficient weight. It must stand by in silent sorrow while every little action of the dead man's life is paraded, while every fault or blemish in his character is made rich matter for lawyers in court to wrangle over. The dead man and his family are put on trial almost as much as the murderer, no matter how much victim and murderer may have been strangers before the fatal meeting. The "skeleton in the closet" which the family had in decency and resignation kept carefully hidden is dragged out before the ruthless world. It is the innocent family must bear the finger pointing and shameful burden, when the dead man might say:—

Cut off, even in the blossoms of my sin,
No reck'ning made, but sent to my account
With all my imperfections on my head.

It is an inexorable law that "breaking into man's bloody house" entails pitiable suffering to those free from every stain of the sin. Perhaps the strongest words that can be used in sympathy with those whose heartstrings have been wrung by the Governor's decision is where he says: "The shame was in the commission of the crime and not in its punishment." It is one of the bad signs in a civilization when being the relative of a man who lawlessly took life is accounted a small thing beside being the relative of a man hanged for the crime. If the law were more certain in its action there would soon be an end to this distinction. As the law now stands there is a good deal to keep alive this distinction in the long delays, the variety of appeals that can be made, and the uncertainty that makes condign punishment seem small among the chances. It has been our duty to lay aside elements of pity that have no right in such cases, and where crime has been committed to advocate even, swift, unerring justice. This has been our guiding principle in the painful and thankless discussion which has been ended by the decision of Governor

Dix. No other consideration in the honest discharge of duty should be of a feather's weight.

The subject before us calls to mind that we have other murderers yet to deal with. Murder runs in classes of infamy as well as being accomplished by a variety of means. The reckless, drunken murder has its companion in the cool and calculating murder. There is the murderer of passion, the stealthy, poisoning murderer, the murder in a tavern brawl, the wife murderer, the murder of one desperado by another, the murder by a woman. The classes might be largely increased beyond these even by a visit to the Tombs. It is a curious thing that every one of them finds its apologists, under one form or another, among men who themselves may abhor the idea of blood. Stokes has his apologists among men who hated the viciousness of the man he slew. Magruder would find apologists by the score south of Mason and Dixon's line or west of the Missouri, because he warned his victim one day that he would shoot him the next. The very thing which will go to convict him of murder with brutal premeditation here would bring a triumphant acquittal in the backwoods. Sharkey would never be molested there, because he shot his man in front of a bar. Simmons, whose ferocity led him to plunge the knife again and again into his victim, will find people to say that it was a policy man he killed, and that it is excusable because there was a struggle, and because Simmons was also a policy man—dog eat dog. King will, perhaps, find people to believe he should not be hanged, because a pistol was found in the pocket of the man he shot from behind. Scannell, who made one attempt on the life of Donohoe before he finally killed him, and furnished himself with the heaviest pistol he could find, to make sure of his work, has had jurors who believed that these things were, with a few others, proof of insanity. Even Nixon would find apologists among the class who believed that the world and its roads were made for them alone. Around the murderess, and sometimes—strange contradiction—the wife-murderer, the greatest amount of shallow sentimentality is thrown. The name of woman alone inspires the first; the suspicion of a husband being wronged is held to palliate the second. All these apologies are of the flimsiest; but their being brought forward can be foretold with certainty as soon as the blood of the victim has been spilled. We cannot purify the atmosphere of society of its murder elements by using an absorbent on only one order of noxiousness. The rich murderer as well as the poor, the influential murderer as well as the unknown outcast, the deliberate and the plotting murderer as well as the hasty, the infuriate or the drunken, must all be treated alike.

"If juries will only do their duty," said a Senator to a friend, "murder must bow its head." We want fearless juries, as well as an unshrinking Executive. These can give society a gauge of security by the conviction of the criminal. While such Governors as General Dix



NO HOPE! GOV. DIX HAS DECIDED THAT YOU SUFFER THE DEATH PENALTY!"

„Keine Hoffnung! Gov. Dix hat beschlossen, daß Sie die Todesstrafe erleiden.“

are in the gubernatorial chair we may rely on stubborn justice being wrought out. He has pledged himself to it, and has given us a telling instance that he can be trusted to keep his word.

THE SCIENCE OF STRANGULATION.

SIR:—Now that an unhappy man is by the laws of the land doomed to die—and others may soon be expected to follow him in his wretched fate—I beg, on the score of humanity, that you and other members of the press raise your voices—if it be not too late—against the hideous and torturing process of putting criminals to death by the brutal process of elevating or “jerking” them up, instead of precipitating them down by the far more certain and humane method of the “drop.” I am not one of those who entertain any morbid sympathy for such men; and though disposed to admit that there is much truth in the aphorism that you may put a man to much more useful purpose than hanging him, I am yet in favor of the old Judaic maxim of holding life responsible for the destruction of life; and unless the penalty can be commuted to perpetual imprisonment (with, in brutal or aggravated cases, an occasional flogging), I still am of opinion that the death punishment should be retained for the safety of society and the impressive warning of those who dread no other species of retribution, but are yet sensible to the power of the dread king of all earthly terrors. But, waiving the discussion of this point, and without in any degree believing that criminals should be chloroformed or drugged to render them unconscious to the last sufferings which the law imposes, I think that they ought not to be subjected to needless agony, and it is in consequence of this belief that I now address you.

In the course of a life now extended over half a century, and in connection with the press for fully forty years, in all quarters of the globe, it has been my painful lot often to witness executions in almost every mode and in most of existing countries, in the old world as well as in the new, on the other side of the equinoctial line as well as on this; and I state without hesitation or exaggeration that, excepting the frightful Syrian (and occasionally Arabian) atrocity of impalement, I have never seen any at once so brutal and so torturing as the foul “jerking” style pursued in this city. The Spanish garroting mode appears to me to be the least painful and most effective, as the vertebræ and nerves of the neck are instantly crushed by it, though the French guillotine may, perhaps, be preferred by many, albeit, reasoning from analogy, as in the instance of the fly, some highly scientific men are disposed to believe the vitality may yet remain in both body and head after the connexion is severed. The military system of finishing an execution by discharging a pistol through the ears is perhaps the best of all; but in a nation like this, inheriting many of its customs and more of its brutalities, from the English, there is a prejudice against the effusion of blood, and the preference appears to be still given to the old and barbarous operation of sus-

pending a man between heaven and earth, as if he were unworthy of either.

But while this mode of "hanging" exists, I hold it should be accomplished without needless torture. I would, therefore, recommend that, in the event of an approaching execution, the gibbet should be constructed on the principle of the fall, instead of the hoist. Some time ago, in Australia, I saw three criminals dropped from a height of six feet, and with the exception of a slight and momentary convulsion of the fingers by one, none of them ever moved a muscle. The necks of all were dislocated, and, as I subsequently ascertained on dissection, the cervical bones, or vertebræ, were actually torn asunder. The operation was superintended by the colonial surgeon, who suggested to the executioner the proper method of fixing the noose so that the neck might to a certainty be dislocated. The gentleman who discharged that duty was an old fellow-pupil with myself of Liston, the celebrated Scotch surgeon, forty-five years ago, and he performed his painful task with strictly scientific ability. The bodies were allowed to remain suspended for half an hour, until all vestiges of life must have been effectually extinguished, and even then he only felt their pulses and placed his hand across their hearts to see that both had entirely ceased to beat before the bodies were lowered down. There was no such disgusting spectacle as I witnessed on the occasion of the last execution in the Tombs, as the revolting sight of a brutal ex-assistant coroner ordering the body to be lowered within a few minutes of its elevation, in order that he, and some other callous professional friends, invited for the purpose, might place their ear to the breast of the unhappy victim, while his hands were still convulsed with the agonies of death—conduct more revolting, if possible, than that of the London sheriffs and aldermen, who, on the occasion of an execution, invariably retire to a costly breakfast in the interior of the jail on the fall of the drop, and there gormandize like hogs for an hour, on the expiring of which the victim is cut down, when, of course, completely dead.

But even if too late to construct a new gibbet on the principle of the drop, some improvement highly desirable might be effected in the present system of the "jerk;" and I would suggest that the jail doctor should be enjoined to instruct the executioner in the art of applying the noose so that the neck may at once be dislocated with certainty, and the culprit thus saved from agony prolonged.

I have the honor to be, etc.,

D. WEMYSS JOBSON, M. R. C. S. E.

3 Clinton place, New York, March 18, 1873.

THE LAST DAYS OF FOSTER.

Deputy Sheriffs Burns and Kœhler assumed charge of Foster on Thursday morning at seven o'clock, relieving Deputies Glennon and Patterson who had the night watch. No change was visible in the appear-

ance of Foster. He said little to his keeper, and talked but little to his wife. More than fifty persons, men, women, and boys, gathered near the entrance to the Tombs at the time of opening the doors for visitors. They seemed to have no well defined object, and were evidently drawn thither by a morbid curiosity. When ordered to move on by a policeman, they would scatter before him, and some would leave, but their places were immediately taken by others. They were of all classes, but most of them were shabbily dressed and wore the shiftless look of habitual idlers. If a person came out of the prison, he was attentively eyed, and if he stopped to speak to a friend or to an officer, he was at once surrounded by a crowd of boys and men.

In the Tombs the affidavit of the seven jurors which was sent to Governor Dix was the common topic of conversation, and variously commented on. A majority of the keepers, as would be expected, expressed much sympathy for Foster, though no hope for him was entertained by them.

WHERE THE GALLOW IS KEPT.

"There it is, right through there," said an aged *habitué* of the Tombs Police Court, pointing up to the northeast corner of that building. The officers pretend to keep its whereabouts a secret from merely morbid inquirers, but everybody knows just where it is. The loft of the Centre and Franklin Streets corner of the Tombs is used as a lumber room, and there, up against the north side, lies a pile of stout, dull blue timbers and braces. They have lain there since the execution of Rogers in Brooklyn. They have often been lent to the sheriffs of other counties, and were last used in the Tombs yard for the execution of the negro, Thomas, two years ago. They were taken out, and the inmates of the cells could hear the dreadful sound of the hammer. Well might the other murderers, confined within those walls tremble. Stokes, the assassin of Fisk, although outwardly exhibiting no signs of fear nor concern, evidently did not enjoy the sounds which reached his ears, as nail by nail was driven into the awful instrument of death, where he, before long, might be called to pay the penalty of *his* crime.

It did not take long to put the timbers together, for they have often been joined before, but it was necessary that there should be no lack of preparation, that the work should be done at once. Soon, very soon, the gallows, that one awful evidence of our slow approach to actual civilization, reared its terrible, demoniac shape toward the sky, its very self a reproach to Christianity, a mockery of all Christlike teachings. Vengeance is mine, saith the Lord, and *I will* repay. The terrible man-slayer, with its seeming ghost-like arms outstretched, as if 'twere reaching eagerly for its victim. Its timbers, which already had supported many a faltering wretch in his trembling walk, only to end in one awful leap into eternity, seemed to creak and groan in very despair at the work assigned them. The wind howled, and shrieked, as so many demons rejoicing at a feast

of blood. One could imagine a monotonous repetition of those words, "Hanged by the neck—hanged by the neck—till you are dead—are dead. And may God have mercy—have mercy on your soul."

THE APPEAL OF THE SEVEN JURORS.

The following extraordinary paper was laid before John A. Dix, Governor of the State of New York, March 17, 1873:

The People agt. William Foster—City and County of New York:—We do solemnly swear that we were jurors in the case of William Foster; that the conviction in his case could never have been obtained but for the opinion which prevailed among the jurors that their unanimous recommendation to mercy would ensure the commutation of the sentence to imprisonment for life. This terrible mistake cannot be remedied now except by the Governor. We would do it if we had the power, but we have not. We earnestly appeal to you, therefore—the only person who can do it—to prevent a man from being put to death through an error of opinion on our part at the time of the trial. In doing this we do all we can to wash our hands of Foster's blood, and we humbly assure your Excellency that if the sentence be carried into effect, in view of the circumstances which we now, under oath, lay before you, we shall never cease to look upon it as an unjust punishment, which was not contemplated by the jury in rendering the verdict.

Sworn to this 15th day of March, 1873, before me, Adam Gos, Notary Public, New York County. (Signed) F. E. Hoagland, R. T. Martin, Samuel Dowding, Henry Leo, George K. Chase, James Daniel, H. C. Rogers.

The Governor said that he would give the document his most careful consideration.

AN INTERVIEW WITH STOKES.

Our reporter visited the Tombs, and failing to obtain an interview with Foster, as a last resource toward obtaining news of some kind, concluded to have a talk with the gay, iron-nerved Stokes. Mr. Stokes appeared to command an excellent flow of spirits, and graciously condescended to be interviewed.

Reporter.—"Well, Mr. Stokes, they are going to hang poor Foster."

Stokes.—"Yes, poor fellow, they'll hang him. I deeply sympathize with his wife and relatives, but public necessity demands his execution. You see we must have some protection for our wives, when they ride in public vehicles."

And thus did the gentleman converse. Our reporter left soon after, fully convinced that he had much to learn of human nature.

(*N. B.*—The publishers of this work have also issued, "The Life, Trial, and Conviction of E. S. Stokes," for the assassination of James Fisk, Jr. It contains many illustrations, and is perfectly authentic. It will be mailed to any address on receipt of price—30 cents.)

RIGHT.

A member of the Bar Association has proposed that two-thirds of the persons composing a jury (excepting in capital cases) shall be competent to return a verdict, no matter what opinion the minority may hold. We have for years advocated a reform of this kind in the jury system. We agree to the proposition excepting as to the exception in capital cases. The proposed rule would and should apply to those cases. Where a jury has to consider the question of depriving an individual of either life or liberty the majority should be competent, by law, to render a verdict. The good effect of such a regulation is obvious. Under it a bribe would have to be divided among several people, or be worthless. Now, it is necessary to buy but one juror to defeat justice. One obstinate or determined villain, who creeps into a jury, may stultify his eleven honest and intelligent compeers. Outside of this view of the case, it is manifestly absurd to force a dozen men to be of the same opinion. Any case so clear that it does not require deliberation or argument in the jury room, and can be settled without the jury leaving their seats, does not need to be tried; nor is such a case often tried, the culprit generally pleading guilty. We trust that proper steps will be forthwith taken to bring this subject to a just course of treatment, and secure to the community a reform for which justice, decency and the public safety are crying aloud and incessantly.

FOSTER'S ATTEMPT AT SUICIDE.

An official connected with the Tombs tells the following story :

At 8½ o'clock Friday morning, Miss Flora Foster, the matron of the prison, entered the cell occupied by the condemned man for the purpose of bringing him a cup of warm coffee. Foster was lying apparently senseless on the pallet, when the matron shook him and asked him to get up. Foster seemed to be in a stupor, and did not make the slightest movement or recognition of the summons, being evidently unconscious. Miss Foster again shook the prisoner, and said, "What's the matter with you?" Foster mumbled in reply, "I'm very sick." The matron at once suspected that something wrong had happened, and exclaimed: "Oh, you wretched man, what have you been doing? What have you taken?" Foster partially raised himself as he reclined on the bed, and replied in a weak voice: "I have taken poison, Dr. Tyng told me not to, but I did."

The matron became quite alarmed and said, "Oh, take this," at the same time forcing the rim of the cup between the prisoner's teeth and pouring the contents down his throat. This caused immediate nausea, and the unfortunate man began to vomit. Seeing this Miss Foster ran into the female prison, and filling a cup with strong, black coffee, carried it back and gave it to the condemned prisoner. This produced more nausea, when Miss Foster, fearing that the prisoner was dying, informed Keeper Matthew Daley of the fact that Foster had poisoned himself.

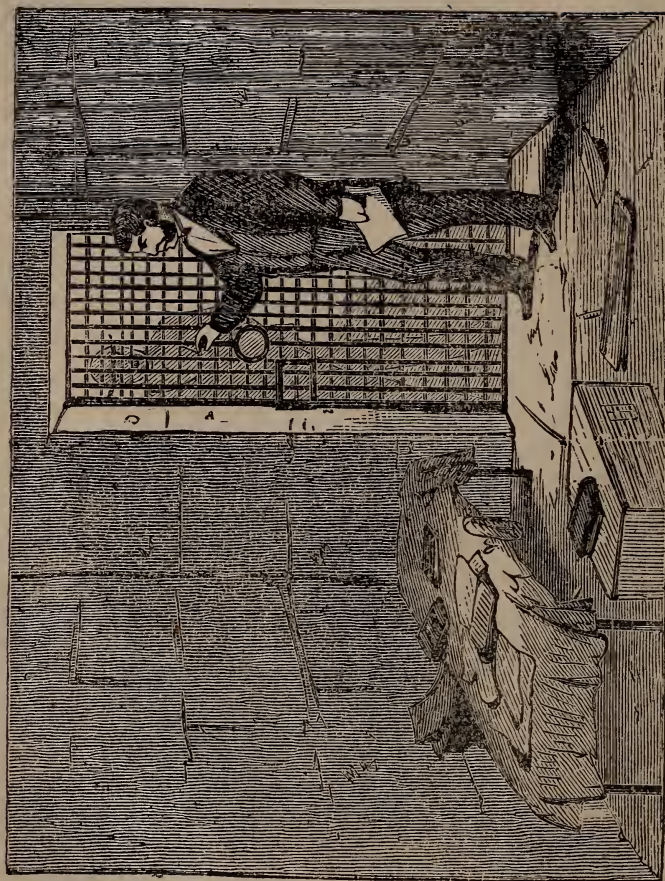
Mr. Daley, though greatly astonished at the intelligence, at once rushed into the condemned cell, and pulling Foster out into the corridor, bathed his head with ice-water, and walked him rapidly up and down the corridor. Dr. Nealis, the physician attached to the Tombs, was at the same time sent for by Keeper Daley. All this time the Deputy Sheriffs—Hanbury and Seebacker—who had held custody over Foster during the night, were unaware of the facts, though the startling news had, in some manner, become known to Scannell, Sharkey and King, who are confined in the tier just above the condemned cells.

On the arrival of Dr. Nealis he at once entered Foster's cell, and inquired of the prisoner, "What is the matter with you? Are you sick?" Foster in a faint voice and uncertain way, said, "I am very nervous." Dr. Nealis then noticed a peculiar appearance about the condemned man. Foster's face presented the dull yellow aspect only noticeable in opium poisoning. His eyes were glassy and firmly set, and his hands were tremulous and wavering. Struck by the marked predominance of these peculiar symptoms, Dr. Nealis, returning to the corridor, asked Keeper Daley, "Can it be possible that this man has taken poison? I think he has!" "Yes," replied the keeper, "he told me so." It was then almost 8 $\frac{3}{4}$ o'clock, and Dr. Nealis, re-entering the cell, shook Foster by the shoulder.

At that moment Sheriff Brennan entered the corridor with his deputies, Mr. Brennan advancing alone to the cell door. He at once perceived that Foster was not in the condition he ought to have been in, so said to Dr. Nealis, "Is this man fit to go out into the yard now?" Dr. Nealis, readily comprehending what was in the Sheriff's mind, replied, "He is if he is carried out right away." The Sheriff at once signified his intention to hasten the proceedings, as already stated, and Foster was at once pinioned and made ready for execution. The prisoner was even then so weak that Sheriff Brennan and Under Sheriff Stevens had to actually lift him out of the cell into the corridor. They then almost carried him to the entrance, and supported him to the gallows, as previously described. While the spectators thought that the duration of the religious exercises were telling on Foster's nerves, it was in reality the weakness caused by the poison acting upon his system. When the rope was cut he was really dying.

The opinion of Dr. Nealis is that if the execution had been delayed until 10 o'clock, the hour originally fixed by the Sheriff, Foster would have died in his cell from poison taken by himself for that purpose. It is not known why these facts were concealed.

It is denied as strenuously in some official quarters as it is asserted positively in others, that this attempt was made.



FOSTER'S CELL IN THE TOMBS. AFTER THE EXECUTION.
Foster's Zelle in den Tombs. Nach der Hinrichtung.

THE EXECUTION.

On Friday morning, before eight o'clock, it was announced that the doomed man was awake and dressing. A few minutes past eight, a heavy, regular tramp was heard, and 150 policemen filed into the prison in charge of Superintendent Kelso. It was a still, wearisome time waiting there, with the crowd of pass-holders swelling, and in a mass crushing each other for precedence, so that the police were obliged to interfere and maintain decorum, in appearance, at least. Foster, at this time, had risen and dressed. He had slept soundly for about four hours and three-quarters; for nature asserted her demand for recuperation of the forces that the strain upon the deepest emotions known to pitiable man had wasted. His sleep was so deep that it was necessary to arouse him at last. This was done gently, and Foster, after rubbing his eyes dazedly for a moment, gave a deep groan, and sank back for an instant. He was deadly pale, and looked more ghastly in the dim light of his cell. The truth had rushed to his soul in an instant. He had been sleeping his last few hours on earth away, and he seemed in his horror already to feel the clammy touch of death around his heart. Rousing himself up, however, he got out of bed and made his toilet, with the occasional kindly assistance of the keepers. He had weakened terribly, and the deputies and keepers shook their heads and spoke in whispers. They feared it might be necessary to carry the wretched man to the scaffold. His breakfast was brought him, a light one, and he ate sparingly. His manner was excessively nervous, and his hand trembled as he brought the cup to his lips.

FITTING THE ROPE.

During this time the assistants without had been as noiselessly as possible stretching the awnings—one above the scaffold itself, and the other pendent from the “bridge of sighs” across the yard. The object of this, it will be remembered, is to screen the execution from those who might endeavor to look on from the upper stories or roofs of buildings near to the Tombs. The running rope was passed over the pulley in the beam, the great weights poised in the air, and the cutting rope laid along the plank and fastened to the cleat. The mattress to deaden the sound of the falling weight was placed in its position. This work, it may here be said, was quickly and well done. Foster heard nothing of it, but its progress was marking time upon his heart, and he would stop for an instant in his meal, and then again begin, as if to distract the poignancy of his thoughts. He ceased eating, and the tray was removed. He sat still and silent, with the horror creeping upon him. After a moment, the tramp, tramp, tramp of the police entering the prison yard is echoed from the dull granite walls, and smites in upon the bitter thoughts of Foster.

Stirred by a sudden revulsion, he leans forward; then, to the astonishment of the lookers-on, starts up as if he had been poisoned. The most delicate dish that ever *chef* concocted would have been like poison then. The sudden shock of the ominous tramp on the burning brain, acted on the stomach, and he vomited several times, until he fell backward with whitened cheeks, bluish, quivering lips, and glassy eyeballs, sunk far into their sockets. It was a horrible sight. A messenger was dispatched for Doctor Vandewater, who, at once penetrating the cause of the sudden sickness, was, nevertheless, astonished at the picture of agony and fear which Foster presented. A little warm coffee was administered, and by degrees the doomed man's face came back to a look of life. Supporting him on either side, he was walked up and down the corridor for a few minutes. Towards half-past eight, the venerable Dr. Tyng, who had taken such deep interest in the case, entered the prison, accompanied by the tall, spare young minister, the Rev. Mr. Walder. Foster now entered his cell with the clergymen, and remained listening to them for about half an hour, and speaking but little.

At nine o'clock exactly, Sheriff Brennan and Under Sheriff Joel O. Stevens entered the cell, and the clergymen came out and stood in silence on either side of the door. The process of pinioning the arms was submitted to by Foster with all meekness, and the warrant was read. The face of the doomed man now resumed its ashy paleness; the noose was rapidly adjusted, with the knot under the left ear; the black cap was placed loosely upon his head, and the awful toilet for the gallows was complete. Foster was dressed in a black frock coat, with a cardigan jacket beneath, and black pants. The solemn procession was then formed. First went the trembling and feeble condemned, supported on his left by Sheriff Brennan, and on his right by Under Sheriff Stevens. The two clergymen followed, and then the Deputy Sheriffs, two and two.

The wretched man's face in the sunlight looked yellowish white. He walked falteringly, as if the strong arms of the Sheriff and his Deputy were needed to help him on. His head dropped upon his breast, and the black ribbons upon the black cap fluttered a little in the breeze. On reaching the gibbet, the man on the verge of eternity was gently turned round so as to face the spectators. Lost to life as he was, he did not seem lost to shame, for he immediately raised his left hand to his face, and shaded it by rubbing his brows.

The Rev. Dr. Tyng, in a clear voice, then commenced to read the Episcopal service for the condemned. As the awful self-accusing words were recited, the doomed man bowed his head still more. At the end of two minutes, his weakness visibly increased. His limbs trembled as with palsy, and a faint but agonized groan escaped from his lips. His left hand still nervously rubbed over his eyes, and his body began to sway to and fro more painfully still. In gazing on his agony, the words of the service became an intolerable monotone. The strong frame of the man

broken with unutterable despair, as it swayed like a reed in the wind, and trembled in every nerve, excluded all things else from the mind that could appreciate the unspeakable misery rolled into those fast-ebbing moments of his life. For five minutes the reading continued, and Foster's weakness had so increased that Sheriff Brennan whispered sharply to Dr. Tyng, "It's too long." The reverend gentleman indeed brought the service to a sudden close, and, turning quickly to Foster, grasped his right hand and hurried away, overcome with emotion, followed by his assistants.

At eighteen minutes past nine, Foster's body fairly leaped into the air. The legs were jerked up to the body convulsively, and opening wide as they relaxed, the heels came together with a sharp click. The left hand was also thrown upward, but fell immediately by his side. In the first half minute following, there were five distinct nervous writhing motions of the trunk. After these, there was no sign of struggle. The cervical vertebræ were evidently dislocated by the shock. After hanging five minutes, the body was lowered, that the doctors might examine for signs of life. At twenty-seven minutes past nine, a faint trill was felt in the pulse. At thirty minutes past nine, pulsation ceased at the wrist. At thirty-three minutes past nine, the heart had ceased beating, and justice had exacted the full penalty for the murder of Avery D. Putnam. Such were the physicians' report, as they stood taking turns in listening at the breast of the thing of clay.

The medical men summoned to assist Dr. Nealis, the prison physician, examined the pulse after the body had been suspended a few minutes, finally pronouncing life extinct in twenty-seven minutes.

The remains were then lowered and placed in a rose-wood coffin, by an undertaker sent by the relatives. Coroner Young held an inquest, as is usual in such cases, and the Sheriff impanelled a jury to certify that the sentence of the law had been duly carried into effect. Thus ended the life of William Foster, in atonement for his crime. The remains of William Foster were quietly interred at Greenwood, on the forenoon of Saturday, March 22.

On this gallows died Bernard Friery, the murderer of Harry Lazarus; Frank Ferris, the uxoricide; Jerry O'Brien, who drove a fish knife through his mistress, the weapon piercing her heart and coming out at her breast; George Wagner, who left an axe so deeply imbedded in his wife's skull, that it took great exertion to withdraw it; Jack Reynolds, the idiot, whose death falsified his own prophesy that "hanging was played out in New York;" John Real, the assassin of policeman Smedick, and John Thomas, a negro, who slew a man of his own race. These died at the Tombs. But the Brooklyn authorities borrowed it and used it to execute Gonzales and Pellissier, the murderers of Otero, and Rogers, who clubbed the life out of policeman Donnelly. Buckhout, the Sleepy Hollow butcher, who shot his wife and friend on a Thanksgiving day, paid the penalty of his crime

on this scaffold, at White Plains; and it has been used up the river, at various times and places, as far as Newburg.

EXECUTIONS IN NEW YORK FOR FORTY-ONE YEARS.

A ROLL OF HORROR.

The following is a list of executions in New York during the last forty-one years:—

Daniel Ransom, January 7, 1832; Richard Jackson, November 10, 1835; Samuel Hackley, January 14, 1837; Edward Coleman, January 12, 1838; Patrick Russell, December 8, 1841; James Eager, May 9, 1845; Charles Thomas, November 20, 1846; Matthew Wood, June 2, 1849; Benson and Douglas, July 25, 1851; Aaron Stokey, September 19, 1851; Otto Grunsig, February 27, 1852; Patrick Fitzgerald, April 19, 1852; William Saul and Nicholas Howlett, January 28, 1853; Joseph Clarke, February 11, 1853; Joseph L. Hoare, January 27, 1854; John Dorsey, July 17, 1857; James Rodgers, November 12, 1858; James Stephens, February 3, 1860; John Crimmins, March 30, 1860; * Albert Hicks, July 30, 1860; Nathan Gordon, February 21, 1862; William Henry Hawkins, June 27, 1862; Bernard Friery, August 17, 1866; Frank Ferris, October 19, 1866; George Wagner, March 1, 1867; Jerry O'Brien, August 2, 1867; John Reynolds, April 8, 1870; John Real, August 5, 1870; John Thomas, March 10, 1871; William Foster, March 21, 1873.

* Hicks was confined in the Tombs until the day of execution, when he was taken to Bedloe's Island and hanged.

KEEPER ORR, THE VETERAN.

Veteran Orr, in conversation with a reporter, in the dismal watches of the night preceding the execution, said: "My first recollection of this sort of thing is, when I was a little boy, seeing Rose Butler taken up Broadway in a cart, to be executed somewhere about Broadway and Twenty-third Street, I think. She had fired a house, and somebody was burned to death. That's as far back as I remember. Another execution I remember hearing about, was of a man—I forget his name—who kept a boarding house in Fletcher Street, I think. He killed a man and dragged his body through Gouverneur Street, and flung it into the river. Suspicion pointed to him, and when they found the body, they took it into City Hall Square, and brought the suspected man up and made him touch it. He fainted right away. They had some story that if the guilty man touched the corpse, blood would flow from the wounds again, or he would faint away, or something of that kind, and he did. Well, he confessed it, and they hung him. But I must go and take a look around."

And the old keeper walked quietly out into the jail yard.

OPINIONS FROM EMINENT NEW YORK DIVINES.

HENRY WARD BEECHER'S SERMON.

PLYMOUTH CHURCH.

GRAND END OF PUNISHMENT—UNIVERSAL CONVICTION OF IMPUNITY—
HANGING A STEP BACK TOWARDS BARBARISM—JUSTICE NOT A BEAR
OR LION, BUT AN ANGEL.

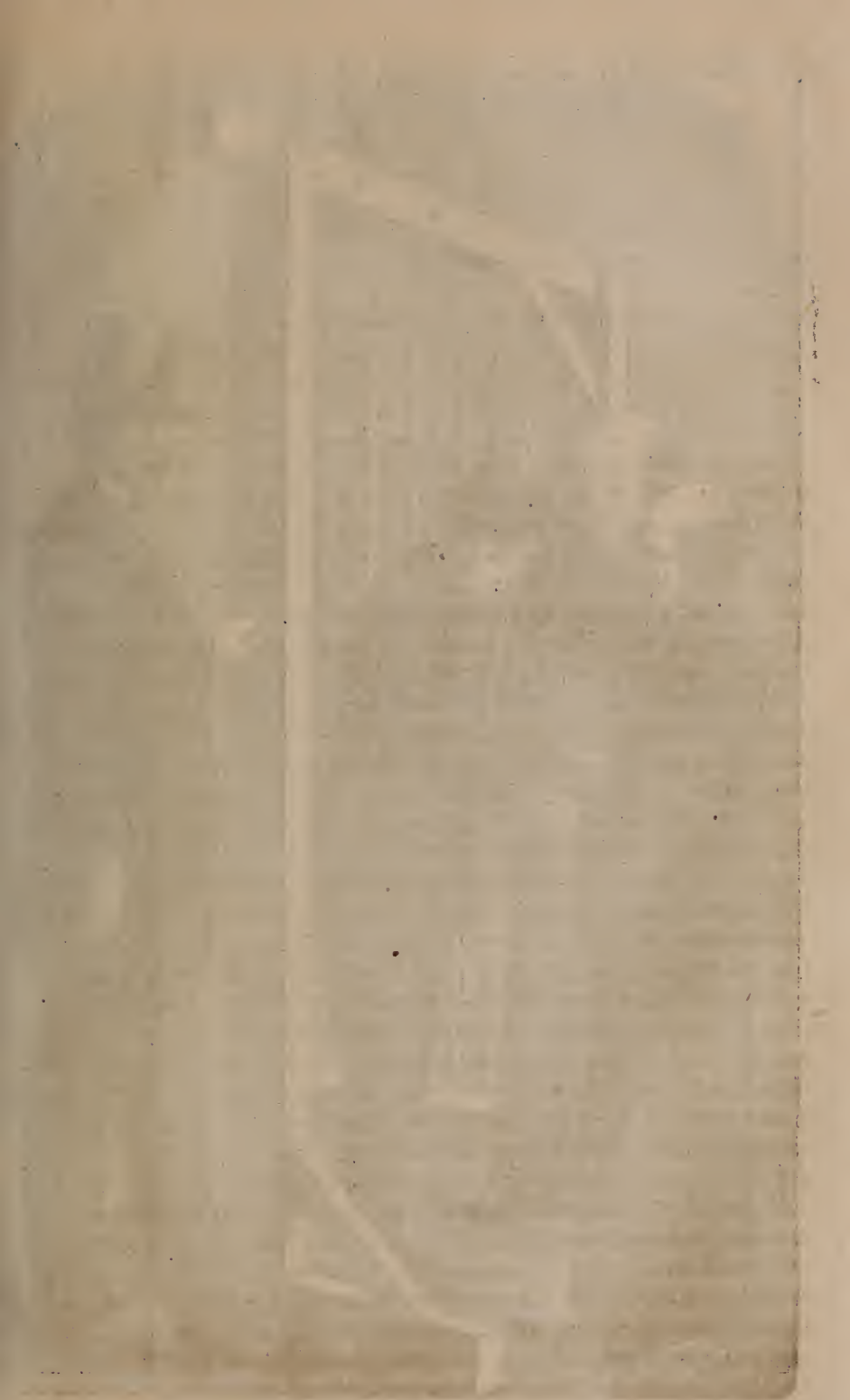
Mr. Beecher's sermon was one called forth by the events of the preceding week. His text was Ecclesiastes viii. 11:—"Because sentence against an evil work is not executed speedily, therefore the heart of the sons of men is fully set in them to do evil."

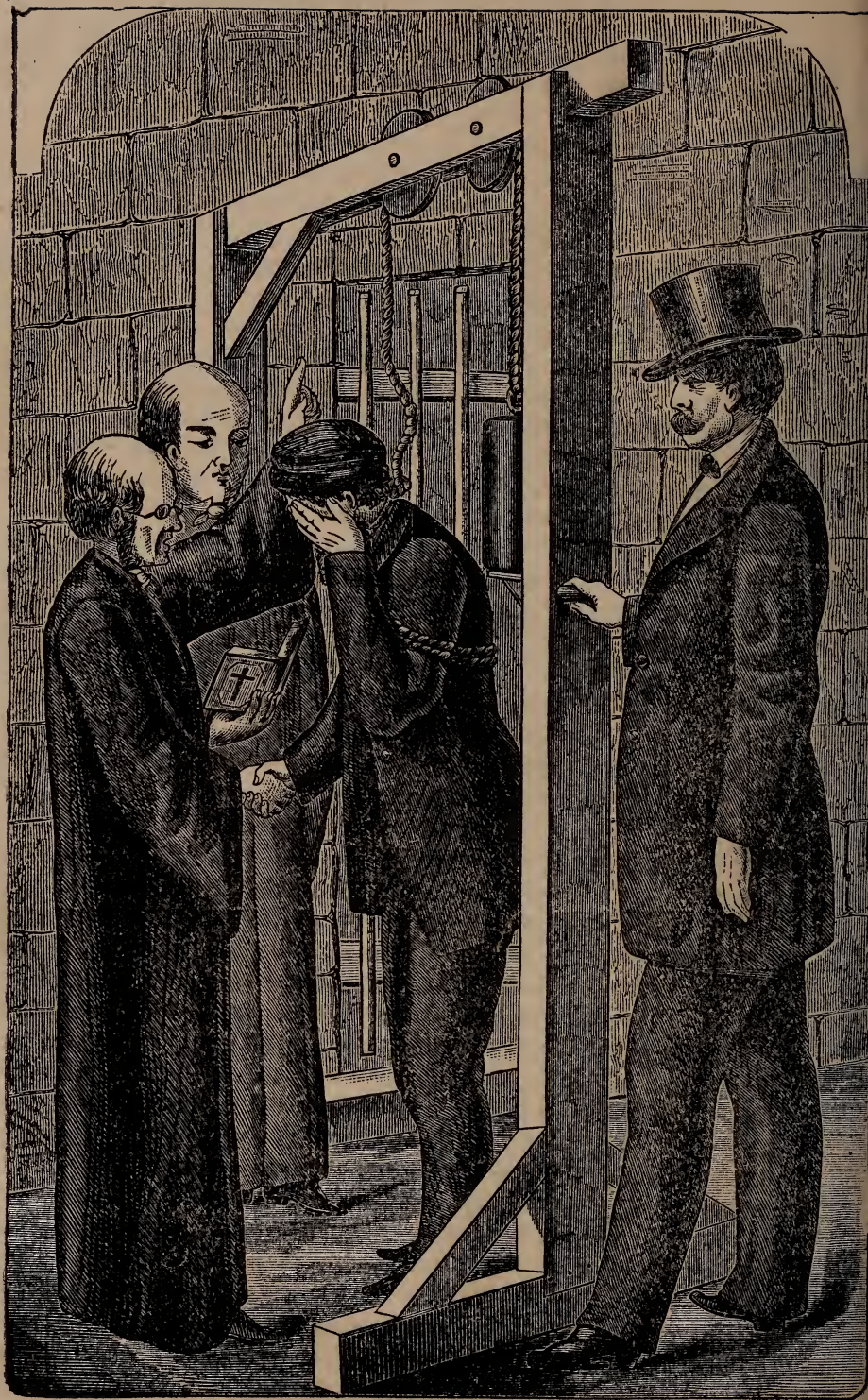
When crime breaks loose, said he, the natural impulse of every one is to blame the police and the laws. Every one cries out for severer legislation to intensify punishment. This matter of punishment cannot be settled in a moment; the subject is not easy; it taxes the most thoughtful men the world over.

What society can do with its criminal members involves so much and runs so deep that security against criminality is the greatest study that can be given to any one. The grand end of punishment in human society is either the protection of society or the reformation of the culprit. These, after all, are one. Human society has no right of punishment for the sake of revenge. It is usually said that punishment is for the sake of protection. Society never protects itself so well as when it reforms. How, in what degree and with what severity is a matter which experience must decide. According to the condition in which society finds itself it has a right to punish. If the society is barbarous then the punishments may be barbarous, but when society is carried up and elevated it has no longer a right to such punishments. The prevention of crime is the duty at one end as well as punishment at the other. The duty is correlative. No society has a right to punish when it does not prevent. In attempting to prevent crime experience determines that it is not severity, but certainty and celerity, which prevents. It is the certainty of suffering in connection with wrong at once which deters; all those laws which lie in the future are neglected; the hope of escape mollifies. If the wrong and the penalty were not a hand's breadth apart then there would be prevention. That crime is increasing there can be no doubt. What is the cause? Emigration is one cause. We have to deal not only with our own criminals, but with those of other countries. The prevalence of crime in such a place as New York City is not to be taken as showing the average. As a place increases the temptations to wrong increase. The increase of pro-

perty is a great one; men see truth less regarded, honesty less regarded, until the gradation from right to wrong seems small; and drink, insanity is another. The use of liquor has been much abated in the regulated classes, but in the unregulated ones it has increased, and criminality springs largely from the unregulated classes. But, above all, is the almost universal conviction of impunity. The bulk of criminals are young, in whom hope predominates over reflection. There are many things which give this impunity—first, the cowardice of householders, who will not protect their premises. If men lie as white as their sheets when they hear a thief in the house, instead of protecting it, it gives impunity. No man is fit to keep house unless he can defend it. It is impunity founded on cowardice that makes it easy for thieves to enter houses. Now, while you curse the thief save a little for yourself. Justice is represented with bandaged eyes, and so the officers of justice think it their duty to have their eyes bandaged, and when men are arrested there are so many chances of escape by compromising with the police or property holders, by political influence, by pecuniary influence. I think there never was a step so backward towards barbarism as the election of judges by the people. Judges know that political influence keeps them in their places, and they are afraid of offending voters. There is a vast pecuniary influence brought to bear on our courts. A man without friends is sent up without delay, because it tells well to do it once in a while; but if a man has friends money reigns. It is held that every man has a right to defence. This is correct in a general sense, but the extent to which it has been carried has almost ruined our courts. If there be such latitude, if genius can pervert justice, then it is the patron of crime.

What is the remedy for this? education and religion and increase of legislation in the direction of cleanliness, health, distribution of population and the discarding of brutal punishments, such as hanging. I do not say the death penalty ought never to be used; it is right in low stages of society, when they have no means of keeping prisoners, but in the higher grades I hold it is wrong. The existence of it renders conviction reluctant and uncertain. It does not produce the effect it once did. I think execution does not deter, but incites crime. A man who has to spend forty years of his life in a penitentiary is a better example to society than a man who is hanged and forgotten. It is going back towards barbarism. As long as men are executed I think jurors will stretch low to let criminals escape. There ought to be a more humane and Christian way of regarding criminals, not as brutes, not as having forfeited all rights. If a man had slain a hundred men he would have his rights, not his right of liberty; but no man can be divested of the right that he is the child of God; it does not follow that we are not to punish, only not as a beast, but as a man. When therefore our punishments are ameliorated our convictions will multiply. The pardoning power in the community has been a source of widespread dissatisfaction. It is said that it gives impunity to





EXECUTION OF WILLIAM FOSTER—NEW YORK "TOMBS."

Einrichtung von William Foster—New York „Tombs.“

crime. I hold that the pardoning power of the Governor is a safety valve. Could all those who are confined in prison be held in check without hope? But it does not seem wise that the pardoning power should reside in the Executive. It ought to be in a council, and there ought to be a certainty of punishment, milder but sure. Justice must not be represented by a bear or a lion, but by an angel. When punishment is lessened then criminality will lessen.

There are one or two questions, said Mr. Beecher, which I should like to ask you. What have you done to prevent crime or to reform criminals? When it is known that alcoholic drinks are the cause of ninety per cent. of the criminality, have you ever tried to stop the sale of it? Do you feel that you have a right to ride in the State as travellers ride in a railroad car? If that which our Master said is true, there is many and many a man who goes out of life whose chances in the next world are better than those of the ones who are left. God said to the Pharisees, "the publican and the harlot shall enter the kingdom of heaven before you."

CHURCH OF OUR SAVIOUR.

A LOST SOUL—KIND WORDS ABOUT FOSTER—SERMON BY REV. J. M. PULLMAN.

The Rev. J. M. Pullman preached on Sunday in Trenor's Lyric Hall, on "A Lost Soul." He took his text from the Lamentations iii. 31: "The Lord will not cast off forever." He said he denied the theory that the 'lost soul' was one on which the Lord would inflict all his infinite resources of torment. A great many people could not help being in a condition of degradation, but, although the attention of most churches was directed to low places of misery for unsaved souls, he would ask them to look to high places for such souls. He would seek them in those ranks of society where the conditions were favorable for a higher and better life. He had heard people speak about the soul of the poor unfortunate man that was lost last week. He did not think this was a lost soul. When a man was lost to the higher law, he was found by the retributive laws of God. This very penalty was a means of restoration. The divine spark in the human soul could never be entirely extinguished. A soul exposed to the eternal fury of God, he maintained, this was a condition which no human soul was ever placed in. The phrase, "An endlessly lost soul," could not be found in the Bible; but they had assurances, on the contrary, that the Saviour had mercy and love for all human sin. A finite man could not commit an infinite offence. The Lord had never lost an atom of his creation, and he could not lose a human soul. He asked them to picture the loving, sympathetic soul, gazing from heaven at another soul suffering the endless torments of hell. God was just and powerful, and these attributes worked under His infinite love. He did not believe that any soul could maintain its defiant attitude against the divine love.

LYRIC HALL

THE ENIGMA OF LIFE, "HOW TO LOVE YOUR NEIGHBOR"—SERMON BY
THE REV. O. B. FROTHINGHAM.

Spring's fresh, bright face, and warm, welcoming smile, called out the lurch-goers and fashionables in large numbers. At Lyric Hall, between Forty-first and Forty-second Streets, the attendance was large, as it always is. Mr. Frothingham's discourse was based upon the words of Christ, "Thou shalt love thy neighbor as thyself." It is related of Jesus (he began), that on one occasion, being accosted by a man, and asked the way to eternal life, he replied: "Thou shalt love the Lord, thy God, with all thy heart and soul." And, acting upon this principle, you will find the eternal life. To know how to love every man, is something very difficult to find out. It is the mystery of mysteries, the enigma of life. There is no question in theology that compares with it. If we look at this matter, we find there are three ways of testing love for a human being—love of soul, love of body, and love of qualities. The love of the soul is the rescue of the soul from the judgment to come. It consists in making the connection with God strong; therefore all these churches and preachers. This love of soul is something which no one understands but a believer in the evangelical. This love of soul has no social meaning at all. It has nothing to do with want, or crime, or sin; it has nothing to do with the problem of pauperism or reform. If there were no hereafter, it would have no significance. Leave out evangelical theology, with the scheme for the future, and this love of soul will be nothing. The love of soul being given up, the love of body claims attention. Whether we have a soul or not, it is incarnated. All sensation is physical. All pain is first of all physical. Hunger, heat, cold, vice, poverty and crime, make the body suffer. Love has regard to the body. It means a roof for the unfortunate, fire for the cold, and food for the hungry. The love of man is the love of his body, and it consists in diminishing his misery. Pain is the ugly thing that all people hate. The New Testament says: "There shall be no more pain." Love means money, soup-houses, asylums, and places of refuge. This kind of love shows itself towards criminals, in trying to make their fate as easy as possible. We see it in the demand that all prisons shall be conducted upon kind principles. This dread of inflicting pain is at the bottom of the claims against capital punishment.

Men would rather be imprisoned for life, than suffer the agony of death by the axe or halter. They would give up everything, rather than undergo the intense agony of those dreadful seconds. Can we pity wretched men and women too much? Why not dismiss them in a trance? Is this love of body the love of man? The love of manhood and the love of qualities are the test of life. It is not the fiction of the soul, or the sensations of the body, that makes the man; it is quality.

ST. GEORGE'S CHURCH.

THE REV. DR. TYNG ON FOSTER—REPENTANCE MEANS SALVATION—THE
REVILINGS OF THE WORLD NOT TO BE REGARDED BY CHRISTIAN SOULS.

Many, no doubt, who attended Dr. Tyng's church were drawn thither by the idea that the reverend gentleman would touch upon the subject of Foster, with whose fate he has been so intimately connected during the past month or so. This was the reason why the large church was crowded in every part, and the name of the executed felon was on everybody's tongue who was there. On ascending the pulpit Dr. Tyng gave as his text a part of the eighth chapter of the Song of Solomon, beginning—"I raised thee up under the apple tree; there thy mother brought thee up." He began by speaking of the mercies which the Almighty vouchsafed to those who cared to follow His ordainments, of the great love and care which was lavished upon His children, and said all had been done by God to give each one a share of that salvation which was intended for all. He said that he had the full hope that the unfortunate man who had been cut off so suddenly during the past week had long before the terrible moment came realized the goodness and mercies of a lovable God. He had met his doom with resignation, and entirely in a Christian spirit. Would that all those who died were as well prepared as that reviled, hunted down criminal. God had said that he would bear the burdens of his children, and this poor wretch had suffered more than the children of this world ordinarily suffer. What matter the spirit with which the world reviles at the Christian? He has a fortitude and a hope greater than mortals can upset. God alone was his judge, and what mattered it to him how the world judged him. Jesus was the stay and the strength of all those who were denied by this world, and the Saviour, who said there was more joy in heaven at the saving of one soul that was plucked from the burning than at the salvation of a hundred righteous ones, had taken that poor castaway soul into His bosom in that kingdom where the wicked cease from troubling and the weary are at rest. Repentance and hope for a better life should animate us all at the last moment.

When the reverend gentleman ended a sermon which was replete with Christian beauty the effect was deep and soul-felt on the congregation. The living illustration was so apt and so well put as to be extremely impressive.

TALMAGE AT THE ACADEMY.

JESUS CHRIST THE ONLY COMFORTER—THE VICTIMS OF SLANDER AND
ABUSE—IS THE PREACHER REBUKING HIS CRITICS?—THE EMIGRATION
FROM TIME INTO ETERNITY.

Mr. Talmage preached to an immense congregation, as usual. Every seat was occupied, and those who came late were provided with accommodations in the orchestra. Mr. Post, the precentor, who had been absent

for a number of Sundays, in consequence of a severe cold, returned yesterday, having almost fully recovered, and led the singing.

Mr. Talmage preached from the text, "And His disciples went and told Jesus," being a statement of the action of the disciples after the beheading of John the Baptist by order of King Herod. The disciples were thrown into grief and dismay by this event, and their grief must find expression. Jesus could understand their grief, and He immediately soothed it. In the first place the preacher commended the behavior of these disciples to all those in the audience who were sinful and unpardoned. There came a time in almost every man's history when he felt from some source that he had an erring nature. The thought might not have such heft as to tell him; it might be only like the flash in an evening cloud just after a very hot summer day. One man, to get rid of that impression, would stimulate himself with ardent spirits, another would seek secularities; but sometimes a man could not get rid of this impression. The fact was that when a man found out that his eternity was poised upon a perfect uncertainty and that the next moment his foot may slip, he must do something violent to make himself forget where he stood or fly for refuge. Driven, perplexed and harassed as you have been by sin, "go and tell Jesus." "Oh," but a man said, "instead of curing my wound you want to make a wound of conviction." Have you never known a surgeon to find a chronic disease, and then, with sharp caustic, burn it all out, and the health come again? So the grace of God comes to the old sore of sin. It has long been rankling there, but by that grace it is burned out through these fires of conviction, "the flesh coming again as the flesh of a little child." With the ten thousand unpardoned sins of your life, "go and tell Jesus."

I commend the behavior of the disciples to all who are tempted. I have heard men in mid-life say they have never had temptations. If they have not, it is because they have never tried to resist, and have not tried to do right. A man hobbled and hand-cuffed, as long as he lies quietly, he does not test its power; but when he rises up, and with determination resolves to snap the hand-cuffs, or break the hobble, then he finds the power of the iron. As long as we go down the current, we seem to get along smoothly; but when we turn and head the other way, toward Christ and heaven, oh, how we have to lay to the oars! It is all folly for one man to say he could not be tempted as another is. The temperament decides the style of temptation; but sanguine or lymphatic, you will have temptation. What are you to do? Tell everybody of it? Ah, what a silly man you would be! With all your temptations around about you, go as these disciples did, and tell Jesus.

Again I commend the behavior of the disciples to all those who are abused and slandered and persecuted. When Herod put John to death, the disciples knew that their own heads were not safe. And do you know that every John has a Herod? There are persons in life who do not wish you very well. Your misfortunes are honeycombs to them. Through

their teeth they hiss at you, misinterpret your motives, and would be glad to see you upset. No man gets through life without a pummelling. Some slander comes for you horned, tusked and hoofed to gore you, and what are you to do? I tell you plainly, that all who serve Christ must suffer persecution. It is the worst sign in the world for you to be able to say, "I haven't an enemy in the world." A woe is pronounced in this Bible of the one of whom everybody speaks well. If you are at peace with all the world, and everybody likes you and approves your work, it is because you are an idler in the Lord's vineyard, and are not doing your duty. It was so in the times of George Whitefield and John Wesley, and what is true of the pulpit is true of the pew, and the street, and the shop, and the store. It is the worst sign in all the world, I tell you, if you are any of you at peace with all the world. The religion of Jesus Christ is war! It is a challenge to "the world, the flesh, and the devil." But what are you to do when you are assaulted, and slandered, and abused? Go out and hunt up the slanderer? Oh, no, silly one. While you are explaining away a falsehood in one place, fifty people will just have heard of it. I counsel you to another course. While you are to omit no opportunity of setting yourselves right, I want to tell you of One who had the hardest things said about Him, whose sobriety was disputed, who was persecuted as a babe, and spit upon as a man, and who was howled at after He was dead. I would have you go to Him. "Go and tell Jesus." And I remark again, I commend the behavior of the disciples to all those who may be bereaved or desolate by the loss of friends. Oh, how many here! God has his own way of taking apart a family. We must get out of the way for coming generations. We must get off the stage that others may come on. This matter of emigration from time into eternity, is so vast an enterprise we cannot understand it. Every hour we hear the clank of the sepulchral gate. The sod must be broken; the ground must be ploughed for the resurrection harvest. Eternity must be peopled, and this emigration from time into eternity keeps three-fourths of the families of the earth in desolation. The air is rent with farewells, and the black-tasselled vehicles of death rumble through every street. Oh, the grave is cruel! With teeth of stone it clutches for its prey. Between the closing gates of the sepulchre, our hearts are mangled and crushed. What are we to do? There is no earthly solace. Has God turned us out on barren Commons to die? No, no! He has not. He comes with sympathy, and kindness, and love. He understands our grief. He is the only One that can fully sympathize.

CHURCH OF THE DISCIPLES.

MAN'S AND GOD'S PUNISHMENTS—THE FEARFUL FATE OF FOSTER, AND ITS LESSONS—SERMON BY THE REV. GEORGE H. HEFWORTH.

One of the largest congregations that have yet attended at the evening services of the Church of the Disciples, at Steinway Hall, was assembled on this occasion. One reason of this, aside from the personal popularity of Rev. George H. Hepworth, the pastor, was, no doubt, the previous announcement that the subject of the discourse would be "Man's and God's Punishments," and the supposition that he would take up the case of Foster. In this respect he did not disappoint the congregation. He took for his text the following words of St. Paul: "Who will render to every man according to his deeds." These words signified, he began, that we were living in a world of law. They implied that we had a master; that we are not to follow our own caprices, but yield to a supreme law. If we do well, then happiness will follow. If clouds gather, hope will remain. If we do ill, and give way to our appetites, at last we shall be ground to powder. Open rebellion against God was but the synonym of death. God was willing to make a covenant with us. If we would put His law into our lives, if we would be subject to Him, then our safety is sure, and there is nothing to fear in the great hereafter. If, on the other hand, we act basely, ambitiously, then misery and death will cover us with its pall hereafter. God gives us the compass to steer by. By following this, at last we will anchor in the harbor of safety. The trouble was, they were all impatient. The things of eternity and Christ are hidden. Instead of going by compass and chart, and the polar star, we go into this inlet; we drift and we ramble, we play with temptation, and then complain at last that we are bruised and wounded. Pursuing this train of prefatory thought, at eloquent length he asked what restraints God had given us to keep us good and virtuous. He dwelt upon the power of His word, and then pictured the power of conscience. We are our own jurors. He who follows an enlightened conscience, could not go astray. Another of God's gifts was love of family. The love a man bears for his wife, is safety for him. This love, and that for his children, press him forward in pursuit of the noble, of the good. Love of character, again, he urged, was a restraint—one of the energies of the soul to keep one from the paths of evil. After all these advantages, if a man goes wrong, he does it knowing the probable consequences. It was a melancholy thing to look upon the wreck of a man. If he were the only one to suffer, it would be bad enough; but in going down, he draws others down to misery. Behind the man you see the aged father. It is a secret that must not be whispered. You see the mother, her eyes dim with weeping, and heart torn, and nothing in the future but absolute hopelessness. You see the wife, her heart wrung, and no hope but in the grave. Worst of all, you see the children, who begin life with a stained name.

All this follows, not in one instance, but in every instance when a stalwart man goes down to ruin. He cannot go down alone; he drags others down with him. Thus far he said he had spoken of the general law.

He wished they would make a personal application of what he had spoken. If any are on the downward road, stop now. The Master also said "Halt." Let them listen to the next command, "Right about face." Dare to be men. Within a few days they had been made acquainted with a notable example of this law. The people had been deeply stirred. They hardly knew whether to sympathize or not. They hardly knew whether to be pitiless or pitiful. A man as well born as any present—a man of fair prospects—had come, within the past week, to an ignominious end. What brought it about? Bad habits; such as he had been warning them against the past year and a quarter. He went into life, determined to have a good time, determined to give to his appetites and passion the utmost gratification. He entered into all kinds of dissipation. He had a right to use this kind of spectacle, and paint therefrom a moral. Heed the lesson. A moral purpose they must love. Infidelity in religion would end in tears and death. How often he had tried on that platform to point out the dangers besetting young men. The devil was everywhere. This spectacle to which he had reverted, had given rise to a new sensation. It showed that they had a whole man in office. He would have signed a thousand times the petition asking commutation, if he had thought it would have done any good. The result has shown that no bribe or friendship could change him. His sentiment was: "Let the Courts do their duty, and he would do his." He would say a few words of the present jury system.

A business man could not get on a jury now-a-days. Juries come from the slums of the city. Men should be tried by their peers. Was this a spasm of justice, or had they entered on the business of justice? They had, in his view, hanged the least criminal one of the caged murderers now in the Tombs. Let them have enough of this thing. Let them have an abolition of the hangman's rope, which was only a relic of barbarism. Foster began with as good prospects as any present. He began with the glass; he took to gaming; he went on to deeper depths of degradation, till he became a murderer. Let all young men take warning by his example. Turn towards Jerusalem and towards God.

ST. PATRICK'S CATHEDRAL.

THE MUSIC—SERMON ON HUMILITY BY FATHER KEARNEY—THE EFFECTS OF PRIDE, AND THE BEAUTIES AND BENEFITS OF HUMILITY.

The high mass at the Cathedral was well attended. The whole front of the church, that is, the part near the doors on Mott Street, was monopolized by Italians, who zealously counted their beads during service and after.

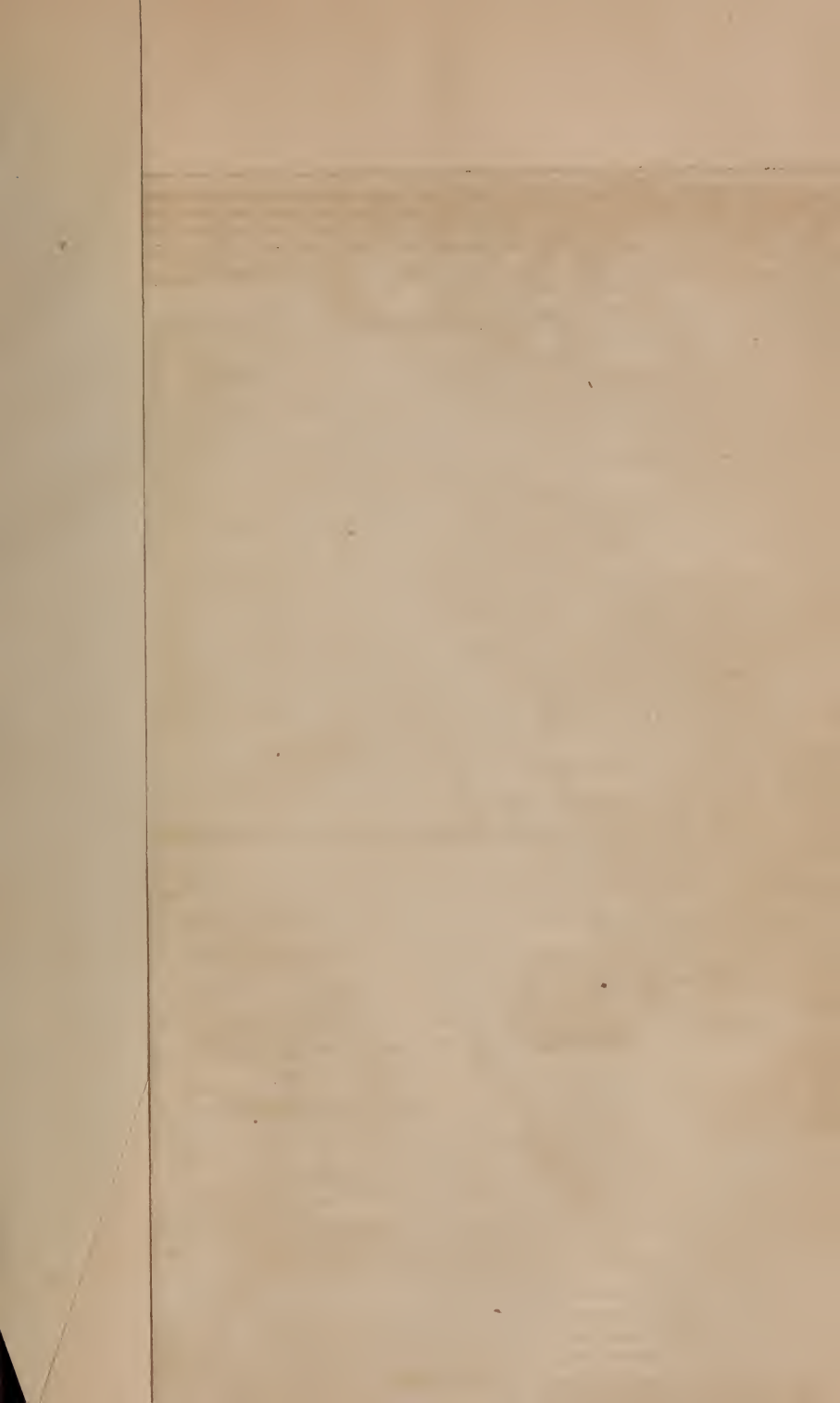
wards as zealously prayed for pennies outside the doors. The music of the mass was very fine. Mercadante's mass in G minor was sung, minus the "Gloria." At the offertory "Fac ut portem," from Rossini's "Stabat Mater," was effectively rendered. During the elevation Mr. Gustav Schmitz, the organist, performed an exquisite extempore, and at the conclusion of the mass he played one of his own grand marches. Father McNamee celebrated mass, and the sermon was preached by Father Kearney.

THE SERMON.

After reading the Gospel for the day the reverend gentleman proceeded to explain the lesson of humility it contained. The gist of his remarks will be found in the following:—

In this holy season of Lent, when, in accordance with the mandates of our holy mother the Church, we are mortifying our sinful flesh, it is meet and just that we should also look to our spirit and curb and correct any little irregularities that we may find it to be possessed of. It is true we mortify the flesh in order to bring the spirit under control, and still there is a sentiment that all of us, whether rich or poor, entertain in a greater or a lesser degree. I have reference to our inherent pride—that sin which has descended to us from Adam and Eve. This is the commonest sin on the calendar, for the reason that it seems to be inseparable from our flesh and blood. When viewed from afar its enormities are not as apparent as when we examine and closely scrutinize it. This sin of pride has been from time immemorial the curse and scourge of mankind. It was pride that caused Lucifer to fall from his high estate to the miserable degree of devil. It was pride, in their own knowledge, that caused Adam and Eve to eat the forbidden fruit and to be turned from Paradise. In the history of nations pride has worked worlds of wrong. The time was when a mere word as to the strength of two powers would cause them to war upon each other to settle the question and satisfy the empty worldly vanity. Among nations a better state of things is beginning to exist, but among the people the same cankerous sore still eats its way to the heart and soul. It may be said that our pride affects none but ourselves; this is a pseudodox opinion, and the insidious poison it contains is only discovered by its effects. Accepting the premises that pride only affects ourselves, what then are its effects? Our catechism asks, "What doth it profit a man if he gain the whole world and lose his own soul?" The answer is obvious to the most untheological among you, and still you sometimes forget that every man's duty is to save his immortal soul, which God has given in his charge.

THE END.





"MURDERER'S ROW," IN THE TOMBS, WHERE FOSTER WAS CONFINED. FOSTER'S WIFE WEeping AT THE DOOR OF HIS CELL.
 Der „Mörder-Binkel“ in den Tombs, wo Foster eingesperrt war. Foster's Gattin weinend an der Thür der Zelle.



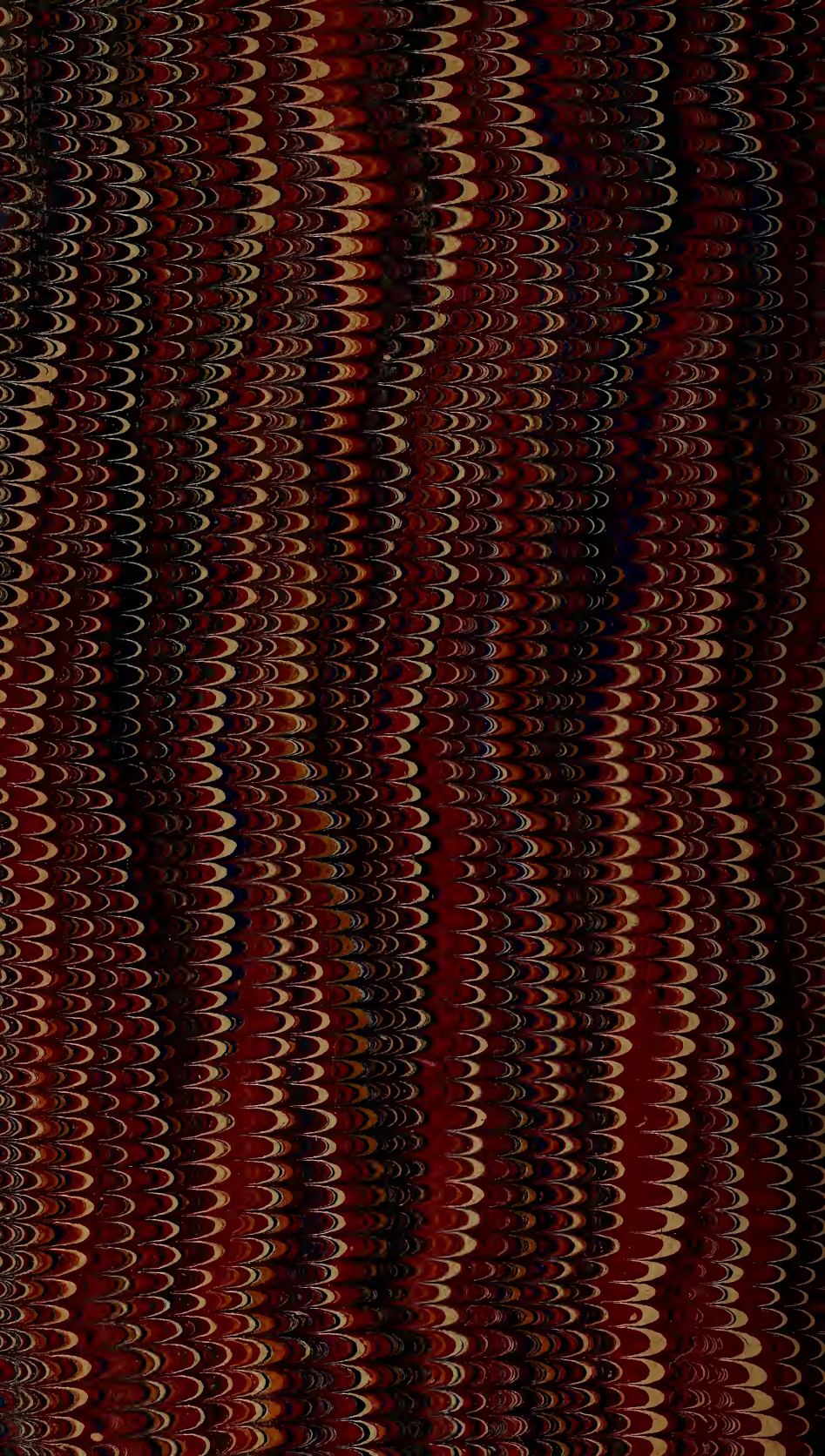


FOSTER'S CELL IN THE TOMBS.



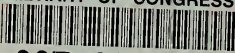
AFTER THE EXECUTION.

(From a Photograph.)





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